

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 254 of 2012

Bajrang Agrawal S/o Late Kailashchand Agrawal Aged About 50 Years R/o Near Kawardha Chowk, Kawardha, Tahsil Kawardha, District- Kabirdham, Chhattisgarh

---- Appellant

Versus

Smt. Sudha Jain, W/o Ishwarchand Jain, aged about 40 years, R/o Guru Tegbahadur Chowk, Naveen Bazar, Kawardha, District Kabirdham (Kawardha), Chhattisgarh

---- Respondent

For Appellant	:	Shri Manoj Paranjpe, Advocate
For Respondent	:	Shri B.P. Sharma, Advocate

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava

Judgment On Board

27/01/2016

Heard on admission.

1. Learned counsel for the appellant assails legality and validity of the impugned judgment and decree on the following submissions:

(i) That the learned lower appellate Court committed gross illegality in not holding that the provision of the M.P. Accommodation Control Act, 1961 (for short hereinafter referred to as "the Act of 1961") are not applicable in the area of Kawardha Municipality (now a district) where the accommodation in dispute is situated. Learned counsel for the appellant submits that though this issue was very specifically raised before the learned lower appellate Court, learned lower appellate Court did not examine the aspect. He submits that this is a pure question of law and with reference to statutory notification issued under the provision of Section 3 of the Act of 1961, the legal issue ought to be examined.

(ii) That the respondent plaintiff has failed to establish bonafide need. It is submitted that the property in dispute is said to have been purchased by registered sale deed dated 7.3.2007 and within a short period, suit was filed on 6.11.2008 claiming bonafide need which the plaintiff has failed to prove by requisite standards. There is already an accommodation in which the business is being run and further requirement of the accommodation in dispute which is available in the same premise, looking to the nature of business, cannot be said to be bonafide.

(iii) That the Court below committed illegality in granting mesne profits in excess of the amount of rent which the appellant was bound to pay being statutory tenant after termination of notice by the landlord.

Reliance has been placed in the case of **M/s. Rathore Trading Co. Vs. Smt. Harminder Kaur** decided on 23.4.2010 in Second Appeal No.67 of 1995.

2. As far as the issue of applicability of the provision of the Act of 1961 is concerned, firstly, this was not raised by the defendant in his written statement and no issue was framed in this regard. During trial, even the concerned statutory notification was not produced before the Court. Though in the appeal, this ground was referred to, statutory notification was not placed before the lower appellate Court. Therefore, it was not necessary for the learned lower appellate Court to go into this question in the absence of material placed before it. Even otherwise, the First Schedule appended to the Act of 1961 under Sr. No.19, in District Durg, Kawardha Municipal Area has been clearly stated. Therefore, this ground is not made out.
3. The Courts below have recorded concurrent finding with regard to bonafide need of the plaintiff after taking into consideration the oral and documentary evidence. No patent illegality or perversity is found in the finding which is based on the oral evidence of the plaintiff with regard to his business requirement for getting the accommodation vacated. The provision under Section 12 (7) of the Act of 1961 is also not attracted because the suit has been filed after one year of the date of purchase of the accommodation. Therefore, this ground is also not made out.
4. However, the appeal was heard on the third issue. This Court framed following substantial question of law:

“Whether the Courts below were justified in law in awarding mesne profit in excess of the agreed rent payable by the tenant under the law ?”

5. The appeal, at this stage itself, was heard finally with the consent of learned counsel appearing for the parties.
6. Learned counsel for the respondent fairly submits that legal position with regard to jurisdiction of the Court to award mesne profit/damages while awarding a decree of eviction in favour of landlord against tenant is squarely covered by the judgment of this Court in the case of **M/s. Rathore Trading Co.** (supra). In the aforesaid decision, this Court, relying upon the decision of the Supreme Court in the case of *Smt. Chander Kali Bail & Ors. Vs. Jagdish Singh Thakur & Anr.* (AIR 1977 SC 2262) and *Hasmat Rai and Anr. Vs. Raghunath Prasad* (1981) 3 SCC 103, has clearly held that possession of a tenant in the suit premises becomes unauthorized or wrongful only when a decree is made which is subject to the final adjudication in the appeal and as long as the appeal preferred by the tenant against the decree of eviction is pending, he remains a tenant as defined under the Act of 1961 and as such, his possession in the tenanted premises does not become unauthorized or wrongful. Thus, when possession is not unauthorized or wrongful, a tenant is not liable to pay mesne profit or any other sum by whatever name called, over and above the agreed rent.
7. In view of the aforesaid pronouncement and settled legal position, the impugned judgment and decree is modified only to the extent that the appellant shall be liable to pay arrears of rent of Rs.19500/- and further, agreed rent per month to the landlord till the date of eviction.
8. The appeal is accordingly allowed to the extent and in the manner indicated above.
9. Decree be accordingly drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge