

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 193 of 2013**

Smt. Kumari Shriwas, aged about 55 years, wife of late Narayan Shriwas, resident of Ratanpur Bada, Near Sitaram Mandir, Gondpara, Bilaspur, Tahsil and District – Bilaspur (C.G.)

----Appellant**Versus**

Laxman Mishra, aged about 67 years, S/o. Shri Ramdas Mishra, Sarwakara through Sitaram Mandir, Gondpara, Bilaspur (C.G.)

----Respondent.

For Appellant	: Mr. Umesh Pandey, Advocate with Mr. Pushpendra Kumar Patel, Advocate
For Respondent	: Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****22/02/2016**

Heard on admission.

1. This is an appeal against the judgment and decree dated 29.10.2012, passed by 5th Additional District Judge, Bilaspur, District Bilaspur, in Civil Appeal No.06-A/2011, whereby the judgment and decree dated 30.11.2010, passed in Civil Suit No.16A/2009, passed by 7th Additional Civil Judge, Class-II, Bilaspur, was affirmed.
2. The appeal is by the defendant against the concurrent finding of facts.

3. Case of the landlord/respondent in brief is that two houses of Sitaram Mandir are situated at Gondpara, Bilaspur, wherein the defendant was the tenant. The said houses were initially of Swami Siyavsharan @ Dharmadas and by a will dated 15.02.1982, the properties were devolved on Laxman Prasad Mishra. Siyavsharan @ Dharmadas, the original owner of the properties died on 06.12.1985. Thereafter, the defendant/appellant was inducted as a tenant by the plaintiff. Initially the rent was fixed for two houses i.e. Rs.250/- and Rs.150/- per month. Subsequently, from the year 2008, the rent was increased from Rs.250/- to Rs.300/- and Rs.150/- to Rs.200/-. From the year 2005 to 2007, the rent was accumulated in respect of the first house to Rs.6450/- and for second house to Rs.12900/-. The defendant/tenant failed to pay such rent. In order to recover such rents, the defendant was served with the notice on dated 17.09.2007 and as against that, the defendant requested to continue the tenancy and initially paid an amount of Rs.2000/- on 05.10.2007 and Rs.400/- on 12.12.2007 and assured to pay the rest of the rent within a short period of time. Subsequently, the defendant stopped the payment of rent and on being asked, the defendant started misbehaving with the plaintiff and eventually it was not paid, therefore, the arrears of rent accumulated to Rs.15,100/- up till June, 2008 and when the amount was not paid, the suit was filed for ejectment. It was further pleaded that since the defendants misbehaved for payment of rent and the plaintiff used to manage the affairs of the temple with the proceeds of rent therefore, for non-payment of rent, management

of temple become difficult and therefore, the vacant possession of the suit properties were sought for.

4. The defendant resisted the suit. It was stated that the plaintiff was not the owner of the said suit property and the houses, wherein the plaintiff is in occupation was given to the defendant 40 years back by the Mandir Samiti and initially in the year 1994, Rs.80/- was fixed as a rent and thereafter Rs.10/- was further increased per month. It was further stated that the defendant according to the agreement has paid the entire rent and is, therefore, not in arrears of rent.
5. The Trial Court after evaluating the pleadings, documents and the evidence, decreed the suit on the ground that defendant has not paid the rent and was in arrears. The said judgment and decree was subject of appeal before the First Appellate Court and the First Appellate Court also affirmed the judgment and decree passed by the learned Trial Court. Hence the instant appeal.
6. Learned counsel for the appellant would submit that the finding arrived at by the learned both the Courts below are perverse and are against the evidence available on record and therefore, the appeal be admitted as the substantial question of law arises for consideration.
7. Perused the pleadings, documents and the evidence on record. The document would show that the suit was filed by the plaintiff, claiming that the appellant/defendant is the tenant and is in arrears, thereby ejectment was prayed for. As against this, the

appellant/defendant contended that the plaintiff was not the owner of the suit property and the tenant is not in any arrears.

8. The status of the appellant as a tenant is not in dispute. The statement of Kumari Shriwas, the defendant is perused, wherein she has admitted that for two houses, the rent was paid to Laxman Mishra and also volunteered that rent was collected at times by the family members of plaintiff. She also admitted that before 23 years, one house was taken on rent and rent was Rs.40/- and before 18 years another house was taken on rent and rent was Rs.60/-. It is further stated that the rent was being paid to Laxman. The document Ex.D/1, which is the rent receipt, which bears the signature of the Laxman Mishra from A to A, which shows that rent was paid to Laxman Mishra, the plaintiff landlord . The document Ex.D/1 is marked by the defendant, which shows that rent was being received by Laxman Mishra. She further stated that Ex.D/1 was kept by the plaintiff and on asking, it was supplied to her. Therefore, in view of such admission both oral as also documentary evidence, this fact was established that rent was being paid to Laxman Mishra and therefore by all means he can be treated to be a landlord. Consequently, the finding of both the Courts below that the plaintiff, Laxman Mishra was the owner can not be faulted with. So the finding of both the learned Courts below that Laxman Mishra, the plaintiff was the landlord was established by the documentary and the oral evidence.
9. Subsequently the evidence and the documents would show that when there was a dispute about the rent, the notices were served

by Ex.P/3 and Ex.P/6 and the rent was also fixed by the Trial Court. The defendant had paid Rs.1000/- each on 05.06.2010 and 16.06.2010 and subsequently paid amount of Rs.560/- on 14.10.2010 and thereafter certain amounts were also deposited. But in intervening period, the defendant failed to pay the rent and it is the finding of the Court below that despite the order of the Court, the defendant has failed to pay the rent. Though the defendant had contended that from January, 2010 entire rent has been paid but except oral evidence, no documentary evidence has been produced to prove such facts of payment of rent. Therefore, it was the finding of both the Courts below that the defendant has failed to pay the rent regularly within stipulated time before and after when the suit was pending, can not be faulted with.

10. So after evaluation of entire facts in the opinion of this Court that the finding arrived at by both the Courts below are finding of fact and it do not call for any interference. In a result no substantial question of law arises for consideration in this second appeal.
11. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE