

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 893 of 2015

1. M/s N. A. D. (Pvt.) Ltd. Company Under Companies Act, Through its Managing Director, Prashant Singh, Age about 42 years, S/o Late Shri A. P. Singh, Office at C-12, Ravi Nagar, Sahkari Nirman Samiti, Raipur, District – Raipur (Chhattisgarh).....Defendant

---- Petitioner

Versus

1. Smt. Amrita Shukla W/o Late Shri Anil Shukla, Age about 52 years, R/o 9 – C- 04, Harshit Ratna, Behind Gurudwara, Tatiband, Raipur, District – Raipur (Chhattisgarh).....Plaintiff

---- Respondent

For Petitioner – Shri Yogesh Chandra Pandey, Advocate.

For Respondent – Shri Arvind Shrivastava, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

26/02/2016

1. With the consent of both the parties, the matter heard finally at the motion stage itself.
2. Facts in brief required for the adjudication of the instant WP(227) are that before the First Additional District Judge, Raipur, Civil Suit No.40A/13 (Smt. Amrita Shukla Vs. M/s. N.A.D. Pvt. Ltd.) is pending for eviction, arrears of rent. In the said suit defendant/petitioner had filed an application for stay of the said suit as earlier he had filed a suit for specific performance of contract and the same is pending as Civil Suit No.31A/2011 before the VIth Additional District Judge, Raipur, C.G. On hearing both the parties, the Court below held that earlier suit belongs to specific performance of the contract, the present suit belongs to the eviction and other prayer based on the basis of landlord tenant suit; the petitioner/defendant had also not filed copy of the plaint and hence it appears that both suits are for different relief. Hence, the Court below dismissed the application. On the other hand, the plaintiff/respondent had filed

an application under Section 13(6) of the C.G. Accommodation Control Act, 1961 (in short 'the Act, 1961') for struck the advance against eviction as the rent as agreed is outstanding. Upon hearing both the parties, the Court below held that relationship as landlord and tenant house in question rented for Rs. 13,500/- per month from 21st October, 2010 is undisputed and as per the provisions of Section 13(1) of the Act, 1961 it is the duty casted on defendant/petitioner to pay rent. Hence, the Court below directed that the entire rent due to be paid within 15 days failing which the Court may consider regarding defence. Further directed that the plaintiff/respondent shall not be entitled to get the said rent till pendency of the suit or until further orders whichever is earlier. Thereafter, on 15-10-2015, on an application filed by the petitioner/defendant, the Court below extended the time to deposit arrears of rent till 29-10-2015. The petitioner had challenged both the orders and submitted that the orders passed by the Court below is illegal, arbitrary and passed without appreciation of the case on its merit. Both were landlord and tenant only upto 14-12-2010, thereafter, they became purchaser and seller. Hence, Section 13(6) of the Act, 1961 is not attracted in the matter. The Court failed to appreciate that the respondent/plaintiff is withholding advance money given by the petitioner/defendant and the plaintiff/respondent deducted rent from the said amount and tried to return the balance amount which was refused by the petitioner. With this, it is submitted that the arrears of rent has been deducted from the said advance amount till August 2011. It is further prayed that the petition may be allowed and the orders passed by the Court below may be quashed and the said civil suit be stayed until disposal of the earlier suit of specific performance of the contract.

3. On behalf of the respondent, written response/objection has been filed and opposed the entire grounds taken in the writ petition and submitted that the cheque after deducting the arrears of the rent till August 2011 was not

accepted by the petitioner. It is also submitted that the Court below rightly dismissed the prayer for staying the suit and gave reasons for the same which are proper. It is further submitted that the petitioner had failed to make out the case. Hence, the petition may be dismissed.

4. Heard both the counsel and perused the material available.

5. It is submitted on behalf of the petitioner that an opportunity may be given to him by filing the plaint as filed in Civil Suit No.31A/2011 and let the Court below may appreciate afresh the prayer for the staying of the Civil Suit No.40A/2013 in the light of the pleadings of the petitioner for Civil Suit No.31A/2011. Also it is submitted on behalf of the petitioner that looking to the advance available with the respondent/plaintiff given on contract and as the petitioner had not accepted the cheque and the amount, with this, the entire advance amount is with the respondent, the arrears of the rent as per order dated 30-09-2015 may be deducted and adjusted.

6. On the other hand, learned counsel for the respondent submitted that the impugned order of the Court below dated 30-09-2015 is not solely based on the non-filing of the copy of the plaint by the defendant/petitioner. Even otherwise, the said order is based on its merit by appreciating every aspects. Hence, there is no any illegality or impropriety in the order and the petitioner may not be given opportunity to agitate the issue again before the Court below. Also it is prayed that the proceedings of both the civil suits are different, the arrears is outstanding; the order of the Court below is not illegal or improper for the deposit of entire amount within stipulated time and also though the said advance amount is still with the respondent/plaintiff in connection with some contract not subject matter of the present suit, they may be adjusted and set off.

7. For the purpose of appreciation regarding the arguments made in this behalf, perusal of the impugned order dated 30-09-2015 shows that copy of the

plaint is not filed on behalf of the petitioner/defendant. When we appreciate the doctrine of staying of the suit, the Court has to examine pleadings of both the suits and has to appreciate whether the matter directly and substantially in issue between the same parties pending as two suits. To appreciate this fact, copy of the earlier plaint is required. Non-filing the copy of the plaint goes to show that the defendant/petitioner deprived of proving any fact regarding same question in issue and substantially as they are same and with the parties as required under the law.

8. In the broader interest of justice, it would be appropriate to grant an opportunity to the petitioner/defendant to file copy of the plaint in the said Civil Suit No.40A/2013 and the Court after affording opportunity to both the parties decide the prayer as made for staying of the said suit afresh.

9. On the other hand, from perusal of the entire material and the arguments led, it appears that prima facie relationship between the parties, rent amount and the lending the premises on rent on a particular date are not disputed. It is also not in dispute that on the application made by the respondent/plaintiff under Section 13(6) of the Act, 1961, regarding advance with the respondent/defendant, the petitioner is not objecting if the entire arrears of rent as accruing may be deducted from the said advance, it would be appropriate to allow for deduction and set off for the arrears of rent outstanding as per law from the advance given by the petitioner to the respondent for the moment.

10. Consequently, the instant WP(227) is disposed of and the Court below is directed that after affording opportunity to file copy of the plaint to the defendant/petitioner and after affording opportunity also to the plaintiff/respondent to file reply or document and thereafter after hearing both the parties, decide the application filed for stay of the Suit No.40A/2013 by

passing an order afresh without being influenced with the earlier order dated 30-09-2015, strictly in accordance with law.

11. The respondent is permitted to deduct, set off all the arrears of rent accruing under the provisions of law from the advance amount given by the petitioner to the respondent in a separate contract and for which a suit for specific performance is pending. The trial Court is directed to record this fact for further hearing.

12. The petition disposed of.

13. The petitioner may file copy of this order before the Court below for compliance.

14. Registrar (Judicial) is also directed to send copy of this order to the Court below for compliance.

15. No order as to cost.

16. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE