

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 405 of 2016**

1. Smt. Basant Kour Wd/o Sardar Jogendar Singh, Aged About 57 Years R/o- Near Kapoor Hotel, Shyamnagar, Near Telibandha Nahar, Raipur, Tahsil And District- Raipur, (Chhattisgarh).
2. Sardar Tiku, S/o Late Sardar Jogendar Singh, Aged About 31 Years R/o- Near Kapoor Hotel, Shyamnagar, Near Telibandha Nahar, Raipur, Tahsil And District- Raipur, (Chhattisgarh).
3. Sardar Raghuvir Singh, S/o Late Sardar Harvansh Singh, Aged About 53 Years R/o- Prakash Bhawan, In Front Of Kankali Talab, Tahsil And District- Raipur, (Chhattisgarh)
4. Sardar Bhajan Singh, S/o Late Harvansh Singh, Aged About 51 Years R/o- Prakash Bhawan, In Front Of Kankali Talab, Tahsil And District- Raipur, (Chhattisgarh).
5. Smt. Ismit Kour Hora, Wd/o Jaimal Singh Hora, Aged About 48 Years R/o- Gurunanak Nagar, Raipur, (Chhattisgarh), Civil And Revenue District- Raipur, (Chhattisgarh).
6. Ku. Rishpreet Kour Hora, D/o Late Jaimal Singh Hora, Aged About 25 Years R/o- Gurunanak Nagar, Raipur, (Chhattisgarh), Civil And Revenue District- Raipur, (Chhattisgarh).
7. Ravneet Kour, S/o Late Jaimal Singh Hora, Aged About 27 Years R/o- Gurunanak Nagar, Raipur, (Chhattisgarh), Civil And Revenue District- Raipur, (Chhattisgarh),.....(Defendents)

---- Appellants/
Defendants

Versus

- Shyam Kishore Agrawal S/o Late Ramsewaklal Agrawal, Aged About 80 Years R/o- Turi Hatri, Purani Basti, Raipur, Tahsil And District- Raipur, (Chhattisgarh),.....(Plaintiff).

---- Respondent/
Plaintiff

For Appellants	:	Shri A.K. Prasad, Advocate.
For Respondent	:	None

Hon'ble Shri Justice Pritinker Diwaker

Order On Board**20/12/2016**

Heard on admission.

02. Appellants/defendants have preferred this second appeal under Section 100 of the Code of Civil Procedure (for brevity "CPC") against the judgment and decree dated 07.05.2016 passed by the District Judge, Raipur in Civil Appeal No.194/2012 partially allowing the judgment and decree dated 04.10.2012 passed by I Civil Judge Class-II, Raipur in Civil Suit No.4-A/2010.

03. Facts of the case are that respondent/plaintiff filed a suit against the appellants/defendants for eviction and arrears of rent on the grounds enumerated in Sections 12 (1) (a) and 12 (1) (h) of the Chhattisgarh Accommodation Control Act, 1961 (for brevity "the Act"). It has also been alleged that the defendants/tenants have raised construction without permission of the plaintiff. On filing civil suit, the summons was issued to the defendants and they have filed the written statement denying the plaint averments except the landlord-tenant relationship between the parties.

04. On the pleadings of the parties, trial Court framed as many as 04 issues and after affording opportunity to the parties to adduce oral and documentary evidence in support of their case, decreed the suit vide judgment dated 04.10.2012 and recorded the finding that defendants have not paid the rent to the plaintiff @ Rs.150/- per months from September, 2007 to December, 2008 despite receiving the notice. The trial Court has further decreed the suit on the ground that illegal construction has been made by the defendants. In the appeal, the appellate Court while affirming the finding of the trial Court with regarding to payment of arrears of rent has set aside the finding on the issue relating to raising of illegal construction vide judgment dated

07.05.2015.

05. Counsel for the appellant submits that the entire rent was paid by the appellants and though the relevant documents were also filed but the trial Court has erred in law in ignoring the same. Likewise, additional documents filed along with the application under Order 41 Rule 27 of CPC have also been ignored by the trial Court. It has been argued that the appellate Court has erred in law in deciding the application filed by the defendants under Order 41 Rule 27 of CPC before passing the judgment.

06. From the material available on record it is apparent that after due appreciation of the evidence, oral and documentary, adduced by the parties the trial Court has recorded the findings in favour of the plaintiff which has subsequently been partially affirmed by the lower appellate Court as well. There does not appear any perversity in the concurrent findings recorded by both the Courts below requiring interference by this Court in exercise of appellate jurisdiction under Section 100 CPC. Fortifying its earlier decisions being *Vidhyadhar v. Manikrao* (1999) 3 SCC 573 and *Abdul Raheem v. Karnataka Electricity Board* (2007) 14 SCC 138, the Apex Court in the matter of ***Vishwanath Agrawal S/o Sitaram Agrawal v. Sarla Vishwanath Agrawal*** reported in (2012) 7 SCC 288 has held that the concurrent findings recorded by Courts below cannot be disturbed until and unless they are perverse or contrary to law. Relevant portion of the said judicial pronouncement reads as under:

“37...High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the courts below are perverse being based on

no evidence or that on the evidence on record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdiction under Section 100 of the Code of Civil procedure.”

07. Thus in view of the above factual and legal background, there appears to be no perversity in the concurrent findings recorded by both the Courts below and being so this second appeal does not involve any question of law much less the substantial question of law.

08. In the result, this appeal being devoid of any substance is liable to be dismissed and it is dismissed as such at the admission stage itself. No order as to costs.

Sd/-

(Pritinker Diwaker)
JUDGE