

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 41 of 2016****Reserved on 25.08.2017**
Pronounced on 05.09.2017

- Firoz Khan S/o Late Abdul Aji Khan, Aged About 48 Years Daulat Pan Palace, Besides The Shop Of Kikabhai, Malviya Road, Raipur, Tahsil & District Raipur, Chhattisgarh, Civil & Revenue District Raipur, Chhattisgarh(Defendant)

---- Appellant**Versus**

1. Abdul Gaffar Khan (Dead) Through Lrs
 1. (a) Abdul Aleem Khan S/o Late M.A. Gaffar Khan, R/o Baijnathpara, Raipur, Chhattisgarh
 1. (b) Abdul Khaleel Khan S/o Late M.A. Gaffar Khan, R/o Baijnathpara, Raipur, Chhattisgarh
 1. (c) Abdul Shamim Khan S/o Late M.A. Gaffar Khan, R/o Baijnathpara, Raipur, Chhattisgarh
 1. (d) Abdul Shakeel Khan S/o Late M.A. Gaffar Khan, R/o Baijnathpara, Raipur, Chhattisgarh
 1. (e) Rajiya Begum W/o Abdul Hafiz, D/o Late M.A. Gaffar Khan, R/o Byron Bazar, Raipur, Chhattisgarh
 1. (f) Sultana Begum Khan W/o A.I.Khan, D/o M.A. Gaffar Khan, R/o Raja Talab, Raipur, Chhattisgarh
 1. (g) Shahjahan Begum Khan W/o K.U.Khan, D/o M.A. Gaffar Khan, R/o Raja Talab, Raipur, Chhattisgarh(Plaintiffs)

---- Respondents

For Appellant	:	Shri B.P.Sharma and Shri Hari Agrawal, Advocates
For Respondent	:	Shri Ashish Surana, Advocate

Hon'ble Shri Justice Sanjay Agrawal**C A V Order/Judgment**

1. This is defendant's second appeal preferred under Section 100 of the Code of the Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the judgment and decree dated 06.01.2016 passed by the District Judge, Raipur in Civil Appeal No. 41/2014, by which, the lower appellate Court while affirming the judgment and decree dated 03.03.2014 passed by the 8th Civil Judge,

Class-2, Raipur in Civil Suit No. 139-A/2011 has dismissed the appeal.

2. The undisputed facts of the case are that the plaintiff Abdul Gaffar Khan instituted a suit for eviction in respect of the property situated at Swami Vivekanand Ward at Malviya Nagar, admeasuring 12 ft. x 10 ft = 120 sq.ft. (henceforth 'suit shop'). It is pleaded that the suit shop was let out to the defendant for running the betel shop (*Paan* shop) at a monthly rent of Rs. 800/-. It is pleaded further that rent was due from February 2010 and was not deposited upto the month of November 2010 despite repeated requests being made by him. A demand notice was, therefore, issued to him on 23.11.2010 by terminating the tenancy of the suit shop w.e.f. 31.12.2010 requiring vacant possession of the suit shop. After receiving the alleged demand-cum-quit notice, the defendant has paid the rent only upto December, 2010, however, has failed to handover the vacant possession of the suit shop to the plaintiff, therefore, his position has become a trespasser with effect from 01.01.2011 and liable to pay damages to the tune of Rs.100/- per day in lieu of utilizing the suit shop unauthorisedly.

3. It is also pleaded that the plaintiff requires the suit shop bona fidely for his son Aleem for carrying out cycle business along with adjacent shop, which is in occupation of another tenant Manoharlal as he is unemployed and, for the said purpose alternative and suitable accommodation is not available to him in the city of Raipur. It is pleaded further that as the defendant did not vacate the suit shop despite issuance of alleged demand-cum-quit notice dated 23.11.2010, therefore, the plaintiff has been constrained in filing the suit for eviction of the defendant on the ground enumerated under Section 12(1)(f) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter referred to as 'the Act of 1961').

4. While admitting the ownership of the plaintiff, the defendant has contested the suit on the ground that the plaintiff, without establishing his ownership, is not competent to file the suit for eviction and denied further that the suit shop is required bona fidely by the plaintiff for the alleged need of his son as he is not in

employment. It is pleaded further that alternative and suitable accommodations in the city of Raipur are available to the plaintiff and the suit has been filed mala fide just for increasing the rent of the suit shop, therefore, liable to be dismissed.

5. In support, the plaintiff has examined his sons Abdul Shakeel and Abdul Aleem as plaintiff's witnesses No.1 and No.2 by producing documentary evidence, like Property Tax Receipts (Ex.P.2 & Ex.P.3), notice, postal receipts etc., while the defendant has examined as many as two witnesses including himself in support of his defence.

6. The trial Court, after considering the evidence led by the parties and that by examining the documentary evidence, particularly, Ex.P.2 and Ex.P.3, i.e., the Property Tax Receipts, vis-a-vis, the admission of the defendant, has come to the conclusion that the plaintiff is the owner of the suit shop and requires the same bona fide for carrying out the Cycle Rickshaw spare parts business for his son and alternative and suitable accommodation for the said purpose is not available to him in the city of Raipur. It held further that the plaintiff's son Aleem is not in employment and, therefore, the need of the plaintiff for his son's alleged business is genuine. In consequence, the trial Court has decreed the suit on the ground enumerated under Section 12(1)(f) of the Act of 1961.

7. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the defendant under Section 96 of the Code of 1908. The appellate Court, by relying upon the said documents Ex.P.2 & Ex.P.3 (Property Tax Receipts) coupled with the defendant's own admission, has also come to the conclusion that the plaintiff is the owner of the suit shop and since the plaintiff's said son Aleem is not in employment, therefore, the suit shop was required bona fide for the alleged need of his son. It held further that alternative and suitable accommodation for the alleged need is not available to him in the city of Raipur. Accordingly, the lower appellate Court, while affirming the finding of the trial Court, has decreed the plaintiff's claim on the said ground as provided under

Section 12(1)(f) of the Act of 1961.

8. Being aggrieved, the defendant has preferred this appeal. Mr. B.P.Sharma, learned counsel for the appellant submits that the judgment and decree as passed by the Courts below are apparently contrary to law. He submits that in a suit for eviction on the ground enumerated under Section 12(1)(f) of the Act of 1961, the plaintiff is required to establish that he is the owner of the suit shop and only upon its proof, would entitle to get a decree for eviction under this provision. He submits further that the alleged receipts (Ex.P.2 and Ex.P.3) pertaining to property tax cannot be taken into consideration in order to come to the conclusion that the plaintiff is the owner of the suit property. He also submits that the plaintiff Abdul Gaffar Khan though adduced his evidence on affidavit as required under Order 18 Rule 4 of the Code of 1908, but, has failed to enter into the witness box in order to establish the fact that the suit shop requires bona fidely for the alleged need of his son and the evidence of his son Abdul Shakeel, examined as his power of attorney holder, cannot be taken into consideration for ascertaining the alleged need of his son as the alleged fact could have been established by him alone. In support, he placed his reliance heavily upon the decision rendered in the case of ***Man Kaur (Dead) By Lrs. vs. Hartar Singh Sangha***, reported in **(2010) 10 SCC 512**. He submits further that after the enforcement of Chhattisgarh Rent Control Act, 2011 (Act No.19 of 2012), all the proceedings initiated under the Act of 1961 has no sanctity and/or the Civil Courts have no jurisdiction to entertain the matter under the old Act of 1961.

9. I have heard learned counsel for the appellant and perused the entire record carefully.

10. The plaintiff Abdul Gaffar Khan has instituted the suit for eviction on the ground enumerated under Section 12(1)(f) of the Act of 1961 as he requires the suit shop bona fidely for the alleged need of his son as he is not in employment. In order to establish the fact that he is the owner of the suit shop, the Property Tax

Receipts (Ex.P.2 & Ex.P.3) were produced by him. Perusal of those receipts would show prima facie that the plaintiff is the owner of the suit shop. Even otherwise, the defendant Firoz Khan, not only in written statement but also has admitted at para 20 of his cross-examination that the plaintiff is the owner of the suit shop. In view of the said documentary evidence, vis-a-vis, the admission of the defendant himself, it is clear that the plaintiff is the owner of the suit shop. At this juncture, it is to be noted that in the matter of *Dilbagrai Punjabi* vs. *Sharad Chandra*, reported in **1988 (supp.) SCC 710**, the Supreme Court accepted the plea of ownership merely on the basis of an admission by the defendant in reply to the legal notice given before the institution of the suit and the recital of the name of the plaintiff as the owner of property contained in the receipt, issued by the landlord to the tenant over a period of time. The Supreme Court found this piece of evidence to be sufficient to prove the ownership of the plaintiff in the limited sense in which it is referred and used in Rent Control Legislation.

11. In the present case, the Property Tax Receipts (Ex.P.2 and Ex.P.3) submitted by the plaintiff coupled with the admission of the defendant himself would lead to an irresistible prima facie conclusion that the plaintiff is the owner of the suit property and, therefore, entitled to institute a suit for eviction on the ground under Section 12(1)(f) of the Act of 1961. Consequently, the Courts below, have rightly come to the conclusion that the plaintiff is the owner of the suit shop. The said finding is, therefore, deserves to be and is hereby affirmed.

12. As far as bona fide need is concerned, the plaintiff has examined his son Abdul Shakeel, who was examined as power of attorney holder of his father, stated very specifically that the suit shop is required bona fide for the alleged need of his brother Aleem. The said witness, who is a member of the family, could very well establish the said fact as well. The Courts below, by considering the evidence of the parties, have thus come to the conclusion that since his son Aleem is not in employment, and therefore, held that the plaintiff requires the suit shop bona fide

for the alleged need of his son and for the said purpose, the alternative and suitable accommodation is not available to the plaintiff in the city of Raipur.

13. However, the contention of Mr. Sharma based upon the principles laid down in **Man Kaur's** case (supra) that since the plaintiff has not entered into the witness box, therefore, the alleged bona fide need of his son cannot be held to be established through his power of attorney holder (son), is noted to be rejected. The reliance of Mr. Sharma in the said case is rather supporting the plaintiff. That is the case, where a suit for specific performance of contract was instituted by the plaintiff on the basis of an agreement to sale, dated 20.10.1978 which was neither signed by him nor has entered into the witness box. He, in fact, entered into the alleged agreement to sale through his power of attorney holder, who alone was aware with regard to all the transactions made therein, but has not entered into the witness box for proving the plaintiff's case. Instead, his second power of attorney holder, who was not personally aware of any of the transactions stipulated therein, was examined. Therefore, in the said factual scenario, it was held by the Supreme Court that through the second power of attorney holder, who was not at all aware with regard to any of the terms and conditions of the alleged agreement, cannot establish the case of the plaintiff. While holding so, it was observed at para 18 (g) as under:-

“18. xxxxxxx xxxxxxx xxxxxxx xxxxx xxxxxxx

(g) A landlord who seeks eviction of his tenant, on the ground of his “bona fide” need and a purchaser seeking specific performance who has to show his “readiness and willingness” fall under this category. There is however a recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or “readiness and willingness”. Examples of such attorney-holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.”

14. The aforesaid observation would support the plaintiff's case as the evidence of the plaintiff through power of attorney holder, i.e., Abdul Shakeel (P.W.1) being

his son and member of the family can thus be accepted. Similar is the view taken by this Court in the matter of ***Naval Kishore Tapadia vs. Munnilal Tailor***, reported in **2010 (3) C.G.L.J. 177**, in which, it has been held at paragraphs 18 & 19 as under:

“18. As already referred above, a Single Bench of High Court of Madhya Pradesh (by Hon'ble Shri D.M. Dharmadhikari, J. as His Lordship then was) in *Shiv Narayan Soni Vs. Smt. Parwati Bai Mesharam* (supra) has held that there is no law that the *bona fide* need can be proved only by the evidence by the landlady and that it can also be proved through other witnesses. It was observed that she (the landlady in that case) being a lady and she having executed a power of attorney in favour of her son it was not compulsory for her to enter the witness-box. Another Single Judge of the High Court of Madhya Pradesh, in *Bashir Vs. Smt. Hussain Bano*, 2005 (2) MPLJ 230, while faced with a similar question and after relying on *Shiv Narayan Soni Vs. Smt. Parwati Bai Meshram* (supra) has held that it is not necessary for the landlord to enter the witness-box to prove the ground of *bona fide* need.

In yet another Single Bench judgment in *Vimladevi Vs. Dulichand*, 1994 (1) MPJR 144, (by Hon'ble Shri R.C.Lahoti, J. as His Lordship then was) has held that even when the owner landlady did not enter the witness-box and her husband, a power of attorney-holder, appeared and deposed, non-examination of plaintiff was not fatal.

19. It is born out from a combined reading and understanding of the above mentioned case laws that in a suit for eviction on the ground of *bona fide* need, it is not necessary for the landlord to enter the witness-box and his *bona fide* need cannot be negated only on the ground that the plaintiff/landlord has not entered the witness-box. True it is that the Supreme Court in *Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd. And others* (supra) has held that the power of attorney-holder cannot depose in place and instead of principal, it is required to be seen as to whether only on this ground the plaintiff/landlord can be non-suited or the evidence adduced by the attorney-holder, who will be treated as a witness of the plaintiff rather than an agent of the plaintiff, can be accepted. This Court is of the opinion that even if P.W.-1 Nand Kishore Tapadia is not treated as an agent of the plaintiff, he still remains a witness of the plaintiff and being his real brother and P.W.-2 Sunderlal Tapadia being another real brother of the plaintiff having also entered the witness box to support the plaintiff's plea of *bona fide* need, the ground under Section 12(1)(e) of the Act, 1961 is required to be examined on the basis of the evidence available on record.”

15. Based upon the above referred principles, the Courts below have not committed any illegality in placing their reliance on the evidence of plaintiff's power of attorney holder in arriving at a conclusion that plaintiff has proved his case for *bona fide* requirement of the alleged need of his son. The findings so recorded, therefore, deserve to be and are hereby affirmed in this count also.

16. Further contention of Mr. Sharma that after the enforcement of Chhattisgarh Rent Control Act, 2011 (Act No.19 of 2012), which came into force with effect from 06.11.2012, all the proceedings initiated under the Act of 1961 has no sanctity or the Civil Courts have no jurisdiction in the matter also deserves to be rejected in view of the principles laid down by this Court in ***Girdharilal* vs. *Shyam Sunder Bhatia***, reported in **2014 (2) C.G.L.J. 290**. While dealing with the similar issues, it has been observed at paragraphs 13 as under:-

“13. Considering the submissions put forth by the either side and on perusal of the provisions of new Act, particularly, the proviso to Section 6 of the Act of 2011 and also taking note of the fact that in the event of accepting the contention put forth by the counsel for the respondent, it would render all those tenants who are pursuing their right under the old Act remediless. At the same time all the appeals or eviction pending before any forum under the old Act would also become infructuous automatically which in my opinion would lead to absurdity. Further, it can not be said that a tenant pursuing his rights conferred upon him under the old Act becomes inconsistent under the new Act which again is not the intention of the legislature. There can not be a situation where after coming into force of the new Act only the appeals which have been or will be filed by the landlord would be tenable before the Court and all those appeals like the present Second Appeal preferred by a tenant or to be filed by a tenant would become non-maintainable. Therefore the objection put forth by the counsel for the respondent being misconceived and is accordingly rejected.”

17. As far as the further contention of Mr. Sharma, though not raised in memo of appeal, that while passing a decree for eviction on the ground enumerated under Section 12(1)(f) of the Act of 1961, the trial Court ought to have recorded a specific finding as per the provisions prescribed under Section 12(6) of the Act of 1961 and in absence thereof decree for eviction under this provision cannot be granted, is also noted to be rejected. The said provision, however, nowhere provides that the eviction decree could be passed only by recording such a finding as contended by him. If we examine the provision of Section 12(1)(f), vis-a-vis, the provision prescribed under sub-section (6) of Section 12 of the Act of 1961, then it would lead to a conclusion that no such requirement or finding is needed to be recorded while entertaining the suit for eviction under Section 12(1)(f) of the Act of 1961.

18. Section 12(6) is relevant for the purpose is reproduced herein as under:-

“12 (6) Where an order for the eviction of a tenant is made on the ground specified in clause (f) of sub-section (1), the landlord shall not be entitled to obtain possession thereof---

(a) before the expiration of a period of two months from the date of the order; and

(b) if the accommodation is situated in cities of Gwalior (including Lashkar and Morar), Indore, Ujjain, Ratlam, Bhopal, Jabalpur, Raipur, Durg or such other towns or cities specified by the State Government by a notification in that behalf, unless the landlord pays to the tenant such amount by way of compensation as may be equal to--

(i) double the amount of the annual standard rent of the accommodation in the following cases, namely :--

(a) where the accommodation has, for a period of ten years immediately preceding the date on which the landlord files a suit for possession thereof, been used for business purposes or for any other purpose along with such purposes, by the tenant who is being evicted;

(b) where during the aforesaid period of ten years, the tenant carrying on any business in the accommodation has left it, and the tenant immediately succeeding has acquired the business of his predecessor either through transfer or inheritance;

(ii) the amount of the annual standard rent in other cases.

19. Examination of the aforesaid provisions would show that it talks about fulfillment of certain conditions by the landlord as provided in sub-clauses (a) and (b) for obtaining the possession of the suit premises only when the decree for eviction is passed. A bare perusal of the aforesaid provision would show further that no such pre-condition requirement is needed to be recorded while entertaining the suit for eviction under this provision. Pre-condition requirements are required to be seen only with regard to those categories of cases which fall under the provisions prescribed under sub-sections (2), (3), (4) (7), (8), (9), (10) and (11) of Section 12 of the Act of 1961 and nonetheless. The only requirement as provided under sub-section (6) of Section 12 of the Act of 1961 is for entitlement of “possession” and would require to be fulfilled by the landlord only when the decree for “eviction” is passed in his favour under Section 12(1)(f) of the Act of 1961. This provision is, therefore, not at all required to be taken into consideration at the time

of considering the suit for eviction under Section 12(1)(f) of the Act of 1961. It only stipulates some mandatory requirements prior to obtain the “possession” of suit premises in pursuance to the decree for “eviction” under this provision. It, however, creates no bar as such at the time of passing a decree for eviction under clause (f) of sub-section (1) of Section 12 of the Act of 1961. The stage for compliance of this provision would be attracted only after the decree for eviction is passed, and not before that.

20. The analysis of the aforesaid provision, vis-a-vis, the provision prescribed under Section 12(1)(f) of the Act of 1961 would, therefore, lead to an irresistible conclusion that no pre-condition requirement is needed to be fulfilled while entertaining and passing a decree for eviction under clause (f) of sub-section (1) of Section 12 of the Act of 1961. Therefore, I do not find any legal impediment in passing a decree for eviction in the instant nature and the Courts below have not at all committed any illegality in passing a decree for eviction under Section 12(1)(f) of the Act of 1961.

21. In view of foregoing discussion, I do not find any substance in this appeal involving question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merit and substance is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge