

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 189 of 2016

Appellant/Defendant 1. Dhiraj Lal Gohil, aged about 73 years, S/o late Devram Bhai Gohil, R/o Gohil Hardware, Main Road, Juna Bilaspur, Tahsil and District Bilaspur

Versus

Respondent/ 1. Smt. Pingla Dewangan, aged about 50 years,
Plaintiff w/o Shri Satyanarayan Dewangan, R/o Kumharpara, Juna Bilaspur, Tahsil and District Bilaspur

For Appellant	:	Shri Upendra Bharat and Shri Parag Kotecha, Advocates
For Respondent	:	Shri Shri Kumar Agrawal learned Sr. counsel with Shri Anand Gupta, Advocate

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

17/01/2017

Heard on admission.

2. Appellant/plaintiff has preferred this second appeal under Section 100 of the Code of Civil Procedure (for brevity "CPC") against the judgment and decree dated 15.3.2016 passed by District Judge Bilaspur in Civil Appeal No. 114-A/2015 affirming the judgment and decree dated 14.8.2015 passed by Civil Judge Class-I Bilaspur in Civil Suit No. 129-A/2015 whereby the suit filed by plaintiff - Pingla Dewangan for eviction was decreed.

3. Facts of the case in brief are that on 3.8.2011 respondent/plaintiff - Pingla Dewangan filed a suit for eviction and

vacant possession on the ground of *bona fide* need of her daughter and son to start business. She has pleaded in the plaint that the suit premises was purchased by her on 13.10.2008 and now the appellant/defendant has become her tenant. Undisputedly, after the notice of the suit was received by the defendant, the entire rent was deposited by him on 21.9.2011. Plaintiff has pleaded that adjacent premises has already fallen vacant and if the suit premises is also vacated, it would be of great use for her son and daughter who want to start their own business in the said premises.

4. Trial Court vide judgment and decree dated 14.8.2015 has decreed the suit on the ground that the plaintiff has succeeded in proving her case that she was in *bona fide* need of the suit premises for the non-residential purpose as envisaged in Section 12 (1) (f) of the CG Accommodation Control Act (for short “the Act”). Against the judgment and decree passed by the trial Court, the defendant preferred an appeal before the lower appellate Court and at the same time plaintiff preferred a cross appeal as one of the grounds taken by her in the suit was not accepted by the trial Court.

5. The lower appellate Court affirmed the judgment and decree passed by the trial Court as far as it relates to the *bona fide* need of the suit property by the plaintiff for non-residential purpose i.e. starting the business by her son and daughter as per the requirement of Section 12 (1) (f) of the Act. The lower appellate Court also granted the decree for eviction against the defendant/tenant as laid down in Section 12 (1) (a) of the Act on

the ground that he has failed to deposit the arrears of rent legally recoverable from him within a period of two months from the date on which a notice for the said purpose was served, and thus reversed the finding recorded by the trial Court on issue No.3 framed by it.

6. Counsel for the appellant/defendant submits that once the entire rent has already been deposited by the appellant/defendant, question of decreeing the suit under Section 12 (1) (a) of the Act does not arise. He submits that the plaintiff has not even been in a position to prove her bona fide requirement of the suit premises and being so the decree of eviction granted by both the Courts below under Section 12 (1) (f) of the Act is liable to be set aside.

7. Counsel for the respondent/plaintiff however very fairly submits that as the entire rent has been deposited by the defendant/tenant, the lower appellate Court should not have decreed the suit on the ground contained in Section 12 (1) (a) of the Act. According to him, as the requirement of Section 12 (1) (f) of the Act has duly been proved by the plaintiff, both the Courts below were fully justified in decreeing the suit on that ground.

8. Heard counsel for the parties and perused the documents on record.

9. From the averments made by the parties and the evidence available on record it is apparent that the respondent/plaintiff is in *bona fide* need of the suit premises for the non-residential purpose of her major son and daughter to start business and that she has no other reasonably suitable non-residential accommodation of her

own in her occupation in the concerned city or town. Thus the concurrent findings recorded to this effect by both the Courts below are affirmed by this Court as well and no interference there with is called for in this appeal. Even if the finding given by the lower appellate Court under Section 12 (1) (a) of the Act is bad in law but the fact remains that the plaintiff is entitled for the decree of eviction under Section 12 (1) (f) of the Act.

10. Even otherwise, 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.”

11. Thus, no substantial question of law is involved in this appeal and being devoid of any substance it is liable to be and is dismissed as such at the admission stage itself. No order as to costs.

12. At this stage, counsel for the appellant/defendant submits that six month time may be given to the appellant to vacate the premises in question. Counsel for the respondent/plaintiff has no objection to this request of the defendant. Being so, six month time from today is granted to the defendant for vacating the suit premises.

Sd/-

(Pritinker Diwaker)

Judge

Jyotishi