

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.401 of 2005**

1. M/s Bajaj Travelling Stores, A partnership firm, Sharda Chowk, Raipur, Tahsil and Dist. Raipur (Chhattisgarh)
2. Mohanlal Chattomal Banaj
3. Vashdev Chattomal Bajaj
4. Sundardas Chattomal Bajaj

Appellants (2) to (4) are Partners in appellant No.1 Firm and all residents of Katora Talab, Raipur, Tah. & Dist. Raipur (Chhattisgarh)

---- Appellants

Versus

Ranjit Kumar Rathore, S/o Chhotelal Rathore, R/o Rathore Chowk, Raipur Dist. Raipur (Chhattisgarh)

---- Respondent

For Appellants	:	Mr.Ashish Shrivastava and Mr.Anurag Verma, Advocates
For Respondent	:	Mr.Raja Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

14/11/2018

1. The substantial question of law involved, formulated and to be answered by this Court in this appellants'/defendants' second appeal is as under:-

“Whether the finding of the first appellate Court on the issue of bona fide requirement and non-availability of suitable alternative accommodation in favour of the respondent is perverse ?”

2. The imperative facts required for determination of above-stated

substantial question of law are as under:-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(2.1) The respondent/plaintiff instituted a suit for eviction and arrears of rent against the appellants/defendants stating inter-alia that the suit shop situated at Sharda Chowk/Jaistambh Chowk, Raipur was let out by the plaintiff to the defendants on 27.3.79 on a monthly rent of ₹ 450/- for non-residential purpose as the shop in question was received by the plaintiff in family partition. It was further pleaded that the said accommodation is required bonafide for opening of his electronic shop and he has no other alternative suitable accommodation in his possession in the township of Raipur for said purpose and he is entitled for decree of eviction under Section 12(1) (a) & (f) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as “the Act of 1961”).

(2.2) The defendants filed their written statement before the trial Court stating inter-alia that the plaintiff is also partner of Deepak Ferro Alloys Limited, Raipur and he is full time partner therein, he has no time, fund and experience for opening of electronic shop in the suit shop. He is also owner of Vinar Bar and Vinar Hotel, he has also a shop admeasuring 1000 sq.ft. beside Vinar Bar and he has also alternative suitable accommodation in the township of Raipur and as such, the suit accommodation is not required bona fide. It has further been pleaded that the plaintiff has already

entered into agreement to sale with the defendants and as such, the suit is liable to be dismissed.

(2.3) The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 15.9.2003 dismissed the suit holding that the defendants are tenant of the plaintiff, but the suit accommodation is not required bona fide for non-residential purpose/for opening of electronic shop and the plaintiff has entered into agreement to sale with the defendants and has obtained ₹ 1,50,000/- as advance amount and tenancy has not been terminated in accordance with law.

(2.4) On appeal being preferred by the plaintiff, the First Appellate Court reversed the finding of the trial Court and decreed the suit on the ground enumerated under Section 12 (1) (f) of the Act of 1961.

(2.5) Questioning that decree, this second appeal under Section 100 of the CPC has been filed by the appellants/defendants, in which substantial question of law has been framed by this Court, which has been set-out in opening paragraph of this judgment.

3. Mr.Ashish Shrivastava, learned counsel for the appellants/defendants, would submit that the First Appellate Court is absolutely unjustified in reversing the finding of fact recorded by the trial Court holding that the suit accommodation is not required bona fide by the plaintiff and further erred in holding that the plaintiff has no other alternative suitable accommodation in his possession in the township of

Raipur for opening of electronic shop, as such, the judgment and decree passed by the First Appellate Court is liable to be set aside relying on the judgments of the Supreme Court in the matters of Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkune and another¹ and Deena Nath v. Pooran Lal².

4. Learned counsel for the respondent/plaintiff would support the impugned decree.

5 I have heard learned counsel for the parties, perused the judgment and decree impugned and records of the Courts below with utmost circumspection.

6. The finding of the trial Court that the defendants are tenant of the plaintiff and the suit accommodation was let out to the defendants for non-residential purpose by the plaintiff has attained finality, as such, there is no dispute in this regard. The trial Court held that the ground under Section 12(1) (f) of the Act of 1961 is not established as the plaintiff did not require the suit accommodation bonafidely. The said finding has been reversed by the First Appellate Court holding that the suit accommodation is required bona fide for opening of electronic shop by the plaintiff as Deepak Ferro Alloys Limited, in which the plaintiff was director has already been closed since July, 1998 and the plaintiff is not owner of Vinar Bar and Vinar Hotel, he is only partner of Vinar Bar and Vinar Hotel for last 7-8 years. The First Appellate Court has also held that the plaintiff has no other

1 AIR 1999 SC 2226

2 (2001) 5 SCC 705

suitable alternative vacant accommodation in his possession for opening of electronic shop and other shop behind the suit shop is not suitable for opening of electronic shop relying upon the statement of Vasu Bajaj (DW-1) and other shop is not independently owned by the plaintiff relying upon the statement of Tulsidas Bajaj (DW-2), as such, it is categorical finding that the plaintiff has no other suitable alternative accommodation in his possession in the township of Raipur.

7. The question for consideration would be whether the First Appellate Court is justified in holding that the plaintiff has established bona fide need under Section 12(1) (f) of the Act of 1961.

8. It is the settled law that it is for the landlord to carry on his business and tenant cannot dictate which is the best place suitable for his business. The Supreme Court in the matter of Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta³ has analysed the concept of bona fide requirement and held that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself – whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide.

3(1999) 6 SCC 222

9. In the matter of Ragavendra Kumar v. Firm Prem Machinery & Co.⁴, the Supreme Court has held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter.

10. In the matter of Prativa Devi v. T.V. Krishnan⁵, it was held by the Supreme Court that the landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally interfered with.

11. The Supreme Court in the matter of Anil Bajaj and another v. Vinod Ahuja⁶ repelling the argument with regard to availability of reasonably alternative remedy Their Lordships held that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilised by him for the purpose of his business. It was observed as under: -

“6. ... What the tenant contends is that the landlord has several other shop houses from which he is carrying on different businesses and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilised by him for the purpose of his business. ...”

12. In the matter of Akhileshwar Kumar and others v. Mustaqim and

4(2000) 1 SCC 679

5(1996) 5 SCC 353

6(2014) 15 SCC 610

others⁷ the Supreme Court has held that choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot thrust upon its own choice on the needy.

13. Likewise, in the matter of Uday Shankar Upadhyay and Ors. v. Naveen Maheshwari⁸ dealing with bonafide need under Section 12 (1)(f) of the Act of 1961 the Supreme Court held as under:-

“11. In our opinion, once it is not disputed that the landlord is in *bona fide* need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well-known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the Courts below that the sons of plaintiff No. 1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained.”

16. Reverting to the facts of the present case in the light of principle of law laid down in the above-stated judgments (supra), it is established on record that Deepak Ferro Alloys Limited in which the plaintiff was director has already been closed since July, 1998 and he has no ownership over Vinar Bar and Vinar Hotel. Even otherwise, the suit shop is required bona fide for opening of electronic shop and the shop situated behind the suit shop cannot be held to be suitable for the plaintiff's need as it is the choice of the plaintiff which of the accommodation is suitable for his

7 2002 AIR SCW 5160
8 2010 AIR SCW 1265

business and the suit shop is situated in the main road and it is located at the heart of Raipur city, which the plaintiff has rightly chosen for his bona fide need and has rightly been selected by the plaintiff for opening of electronic shop.

17. The First Appellate Court has considered the entire evidence available on record to hold that the plaintiff has no other suitable alternative accommodation in his possession for opening of electronic shop and suit shop is required bona fide for his non-residential purpose, which is neither perverse nor contrary to record, as such, the First Appellate Court is absolutely justified in holding that the plaintiff has established the ground under Section 12(1) (f) of the Act of 1961 and the suit accommodation is required bona fide for opening of electronic shop, which is the finding of fact based on evidence available on record. I do not find any illegality or infirmity in the impugned judgment and decree. Accordingly, the second appeal deserves to and is hereby dismissed leaving the parties to bear their own cost(s).

17. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-