

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.341 of 2007**

Akhechand Bhikamchand Dharmada Trust, Through Trusty Jagdish Parekh aged about 48 years, S/o. Shri Jugrey Pakesh, R/o Gandhi Ward, Mungeli, Dist. Bilaspur (Chhattisgarh)

---- Appellant

Versus

Bharat Lal Soni, aged about 74 years, S/o Ghasiram Soni, Dawpara, Sonarpara, Mungeli, District Bilaspur (Chhattisgarh)

---- Respondent

For Appellant	:	Mr.Anurag Verma, Advocate
For Respondent	:	Mr.Vinay Pandey and Mr.Ravi Kumar Bhagat, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

25/10/2018

1. The substantial questions of law involved, formulated and to be answered by this Court in this plaintiff's second appeal are as under:-

“i) Whether the learned lower appellate court was justified in reversing the decree of the trial court and dismissing the suit by ignoring uncontroverted evidence of requirement of office of the trust ?

ii) Whether the learned appellate was justified in holding that office requirement could be fulfilled by using room of the first floor, in view of evidence that those rooms were part of Dharamsala and hence not suitable for office purpose ?

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 plaintiff is registered trust under the provisions of the M.P. Public Trust Act, 1951 (hereinafter called as “the Act of 1951”). It was averred that the suit shop was let out to the defendant on a monthly tenancy of ₹ 103/- for non-residential purpose, but the defendant failed to pay monthly rent from 10.10.95 to 31.1.98. It was further averred that the suit shop is required bona fidy for opening office of plaintiff under Section 12 (1) (f) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as “the Act of 1961”) as the plaintiff trust has no other reasonable alternative suitable accommodation in its possession in the township of Mungeli and the tenant/defendant despite serving of notice failed to vacate the suit shop leading to filing of the suit for eviction and for arrears of rent.

(2.2) The defendant filed his written statement opposing the averments made in the plaint stating inter-alia that the plaintiff has other reasonable alternative suitable accommodation in his possession in the township of Mungeli and therefore, the suit shop is not required bona fidy by the defendant, but admitted the relationship of landlord and tenant and prayed for dismissal of suit.

(2.3) The trial Court after appreciating oral and documentary evidence available on record held that the defendant is tenant of the plaintiff on a monthly tenancy of ₹ 103/- and the suit shop is required to the plaintiff bona fidy under Section 12 (1) (f) of the Act of 1961 and decreed the suit

and also granted damages to him.

(2.4) On appeal being preferred by the defendant, the First Appellate Court interfered with the finding of the trial Court and held that the suit shop is not required bona fide by the plaintiff as the plaintiff has reasonable alternative suitable accommodation at Mungeli and allowed the appeal and dismissed the suit.

(2.5) Being aggrieved and dissatisfied with the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial questions of law have been framed by this Court, which have been set-out in opening paragraph of this judgment.

3. Mr. Anurag Verma, learned counsel for the appellant/plaintiff, would submit that the First Appellate Court is absolutely unjustified in interfering with bona fide need found established by the trial Court under Section 12(1) (f) of the Act of 1961 as the plaintiff is the best person to indicate which accommodation is suitable for its non-residential purpose, as such, the judgment and decree of the First Appellate Court deserves to be set aside.

4. Mr. Ravi Kumar Bhagat, learned counsel for the respondent, would support the impugned judgment & decree and submit that the First Appellate Court has rightly held that bona fide need is not established by the plaintiff.

5 I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

6. The plaintiff is registered trust under the provisions of the Act of 1951. The need set out that the trust which runs Dharamshala has no office for its own, therefore, the suit shop, which is situated in front of Dharamshala is needed for running office so that guest visiting Dharamshala can be dealt with suitably, as such, the suit shop is required bona fide and the plaintiff trust has no other reasonable alternative suitable accommodation in his possession in the township of Mungeli. The said need was accepted by the trial Court, but has interfered with by the First Appellate Court on the ground that the plaintiff has 20 more rooms in Dharamshala.

7. The question for consideration would be whether the First Appellate Court is justified in interfering with bona fide need set out and found established by the trial Court.

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 Gupta¹ 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

¹(1999) 6 SCC 222

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.

9. In the matter of Ragavendra Kumar v. Firm Prem Machinery & Co.², 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. Krishnan³, 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 Ahuja⁴ 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

²(2000) 1 SCC 679

³(1996) 5 SCC 353

⁴(2014) 15 SCC 610

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. Reverting to the facts of the present case in the light of principles of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that it is the choice of the landlord to choose the place for his business which is most suitable for him and it is not for 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.

13. In the instant case, undisputedly, the suit shop is situated in main road and in front of Dharamshala, other 20 shops are situated inside Dharamshala and for opening of office of Dharamshala, the shop situated in front of Dharamshala has been claimed by the plaintiff to be most suitable and proper, therefore, it is choice of the plaintiff and it is rightly so because the suit shop is situated in front of Dharamshala and other rooms are situated inside Dharamshala and Dharamshala run by the plaintiff, as such, in view of judgments of the Supreme Court, the choice of the landlord could not have been interfered with by the First Appellate Court, particularly when it is not the pleading that these 20 rooms, which are inside Dharamshala, are suitable for opening of office of Dharamshala by

the plaintiff and can be used as office by the plaintiff, as such, the First Appellate Court is absolutely unjustified in interfering with bona fide need set out and found established by the trial Court.

14. There is one another reason for not upholding the judgment and decree passed by the First Appellate Court. The State Government has issued the notification on 7.9.1989 in exercise of the powers conferred by sub-section (2) of Section 3 of the Act of 1961 exempting the Registered Trust from all the provisions of MP Accommodation Control Act, 1961, which states as under:-

“NOTIFICATION NO. F-24-(4)-83-XXXII-I dated 7-9-1989, published in M.P. Rajpatra of the same date on p.2144.

In exercise of the powers conferred by sub-section (2) of Section 3 of the Madhya Pradesh Accommodation Control Act, 1961 (41 of 1961), the State Government hereby exempts all the accommodation owned by-

(i) the Wakf, registered under the Wakf Act, 1954 (29 of 1954), or

(ii) the public trust registered under the Madhya Pradesh Public Trusts Act, 1951 (30 of 1951) for an educational, religious or charitable purpose,

from all the provisions of the Madhya Pradesh Accommodation Control Act, 1961 (41 of 1961)".

15. In the matter of Ramgopal and another v. Balaji Mandir Trust and others⁵ the Supreme Court has held that trust registered under the M.P. Public Trust Act, 1951 was entitled to file a suit on the strength of exemption notification without taking recourse to Section 12 (1) (f) of the

⁵ (2003) 5 SCC 17

Act of 1961, as such, the plaintiff trust was not at all required to plead and establish the need under Section 12(1) (f) of the Act of 1961 in view of exemption from the Act of 1961 available to him, as such, the First Appellate Court is absolutely justified in interfering with the judgment and decree of the trial Court.

16. In view of aforesaid discussion, I am unable to sustain the judgment and decree passed by the First Appellate Court, it is accordingly set aside and that of the judgment and decree of the trial Court is restored.

17. The second appeal is allowed to the extent indicated hereinabove.
No cost(s).

18. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-