

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.1169 of 1999**

1(a). Jagmeet Singh Khalsa S/o. Late Kulwant Singh, aged about 28 years, R/o Bharat Auto Service, Main Raod, Takhatpur, Distt. Bilaspur (CG)

2. Smt. Paramjeet Kaur W/o Shri Kulwant Singh, aged about 40 years, resident of village Takhatpur, District Bilaspur

---- Appellants

Versus

Sudhakar Pandey S/o late Shri Ramadhar Pandey, aged about 58 years, r/o Takhatpur, District Bilaspur

---- Respondent

For Appellants	:	Mr.Ashish Shrivastava and Mr.Anurag Verma, Advocates
For Respondent	:	Mr.Ashok Kumar Shukla, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

01/11/2018

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 trial Court and first appellate Court that the plaintiff bonafide requires the suit accommodation for starting business of his sons and he has no other non-residential accommodation of his own for this purpose in his occupation, is perverse and against the law ?

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 ejectment and arrears of rent stating inter-alia that he is landlord and owner of the suit accommodation situated in Main Road, Takhatpur, District Bilaspur, which was let-out to defendant No.1 on a monthly rent of ₹ 200/- for non-residential purpose, to which defendant No.1 unauthorizedly sub-let to defendant No.2. It was further pleaded that the said accommodation is required bonafide for starting business of his three sons i.e. for opening grocery and hardware as well as cloth shop. He has other alternative suitable accommodation in his possession in the township of Takhatpur. It was also pleaded that one accommodation situated behind the Central Bank of India is not suitable for business of his sons as the same is located on the side road, whereas the suit accommodation is situated in main road near bus stand and that suit accommodation is most suitable for starting business of his sons. It was lastly pleaded that despite service of notice, defendant No.1 has not paid rent of ₹ 5400/-, as such, the defendant is liable to be evicted under Section 12 (1) (a), 12 (1) (b) and 12(1) (f) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as “the Act of 1961”).

(2.2) Original defendant-Kulwant Singh filed his written statement before the trial Court stating inter-alia that the suit accommodation is not required bonafide for starting business of his sons as one of his sons is of unsound

mind and three shops situated behind Central Bank of India, Takhatpur which have been let-out to Mahakaushal Plantation Limited are suitable for the plaintiff's sons for alleged bonafide need, as such, ground of sub-letting and arrears of rent is also not available to the plaintiff and prayed for dismissal of suit.

(2.3) The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 16.3.98 granted decree in favour of the plaintiff under Sections 12(1) (a), 12(1) (b) and 12(1)(f) of the Act of 1961.

(2.4) On appeal being preferred by the defendants, the First Appellate Court affirmed the decree only under Section 12 (1) (f) of the Act of 1961.

(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 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 both the Courts below have committed grave legal error in holding that the suit accommodation is required bonafide by the plaintiff for starting business of his sons. He would further submit that the plaintiff has failed to establish that he has no other non-residential alternative suitable accommodation of his own for the purpose of his occupation as he has other alternative suitable

accommodation in his possession and therefore, both the Courts below are absolutely unjustified in granting decree. He would rely upon the judgments of the Supreme Court in the matter of Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkune and another¹, Deena Nath v. Pooran Lal² and the judgment of the High Court of Madhya Pradesh in the matter of Chirongilal Kshiram v. Shankerlal and others³.

4. Mr.Ashok Kumar Shukla, learned counsel for the respondent, would support the impugned judgment & decree and submit that both the Courts below are absolutely justified in granting decree in favour of the plaintiff based on the ground enumerated under Section 12(1) (f) of the Act of 1961.

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. It is not in dispute that defendant No.1 is tenant of the plaintiff/landlord and the suit accommodation is situated in Bilaspur-Mungeli Main Road at Takhatpur. The suit accommodation was let-out for non-residential purpose i.e. motor-cycle repairing works for monthly rent of ₹200/-. The plaintiff pleaded need of his three major sons for starting shops for them. His elder son is Ratnakar Pandey, who is married. It is case of the plaintiff that his three sons are married and they are working in the plaintiff's ancestral jewellery shop along with the plaintiff named as

1 AIR 1999 SC 2226

2 (2001) 5 SCC 705

3 1979 M.P.L.J. 314

Ramdutt Ramlal Jewellers though they are major, they have no separate work, they wish to start their own independent shop of grocery and hardware for which the suit accommodation is required bonafide and the plaintiff has no other alternative suitable accommodation in the township of Takhatpur except the suit accommodation, which is situated in main road. The plaintiff has amended his pleading by order dated 15.7.97 that accommodation behind the Central Bank of India which is not in main road and is on the side road and is not suitable for starting business of his sons. The trial Court came to the categorical conclusion that the suit accommodation is required bonafide by the plaintiff for starting business of his sons. Since the suit accommodation is situated in main road at Takhatpur and that too near bus stand and their two sons have no separate business, the suit accommodation is required bonafide. It was also held that the landlord is best judge as to which accommodation is most suitable for his/her business and tenant cannot dictate the choice of the landlord. It was also held that the suit accommodation is situated in main road near bus stand and therefore, it is most appropriate for the plaintiff's bonafide need. Finally, it has been held that the plaintiff's son being unemployed and only they are assisting their father, therefore, bonafide need is established and the plaintiff has no other alternative suitable accommodation in his possession for his sons' need in the township of Takhatpur. The said finding has been affirmed by the First Appellate Court.

7. The question for consideration would be whether the First Appellate

Court is justified in affirming bona fide need set out and found established by the trial Court 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 Gupta⁴ 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.

9. In the matter of Ragavendra Kumar v. Firm Prem Machinery & Co.⁵, 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. Krishnan⁶, it was held by the Supreme Court that the landlord is the best judge of his requirement and

4(1999) 6 SCC 222

5(2000) 1 SCC 679

6(1996) 5 SCC 353

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 Ahuja⁷ 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. 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. In the instant case, undisputedly, the two Courts below have concurrently held that the plaintiff's sons are unemployed and they are only assisting their father in

7(2014) 15 SCC 610

his business and the suit accommodation is required bonafide for starting business of his major unemployed sons. The said finding of bonafide need is under Section 12(1)(f) of the Act of 1961 as it is not in dispute that the plaintiff is landlord and owner of the suit. The bonafide need recorded by two Courts below cannot be held to be perverse or contrary to law. So far as the shop situated behind Central Bank of India of Takhatpur is concerned, it has clearly been held by the trial Court relying upon judgment of the Madhya Pradesh High Court in the matter of **Noor Mohammad v. Murlidhar**⁸ in which the High Court of Madhya Pradesh has held that tenanted non-residential accommodation situate on main road are more suitable for starting business as compared to alternative accommodation situate on the side road, tenanted accommodation cannot be refused to landlord on ground of availability of alternative accommodation.

13. In the matter of **Akhileshwar Kumar and others v. Mustaqim and others**⁹ 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.

14. Likewise, in the matter of **Uday Shankar Upadhyay and Ors. v. Naveen Maheshwari**¹⁰ dealing with bonafide need under Section 12 (1)(f) of the Act of 1961 the Supreme Court held as under:-

⁸ AIR 1985 Madhya Pradesh 260

⁹ 2002 AIR SCW 5160

¹⁰ 2010 AIR SCW 1265

“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.”

15. In the matter of Ahmad alias Mohd. Ahmad v. Mohd Osman¹¹ the Supreme Court declined to interfere with the concurrent finding recorded by the Courts below.

16. The two Courts below have concurrently recorded a finding that the plaintiff has no other reasonable alternative non-residential accommodation in his possession in the township of Takhatpur and it is choice of the landlord to choose the place for starting business of his sons and the accommodation situated in side road behind Central Bank of India is not suitable for starting business of the plaintiff's sons is the finding of fact based on evidence available on record. In view of that, the concurrent finding recorded by two Courts below holding the bonafide need to be established and the plaintiff has no other non-residential reasonable suitable accommodation for starting business of his sons 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

¹¹ (2017) SCC 252

their own cost(s).

17. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-