

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 8.2.2018

Delivered on 13.2.2018**WPC No. 356 of 2018**

Haji Abdul Razzak Khan S/o Haji Abdul Vahab Khan Aged About 57 Years Proprietor M/s. Dada Bhai Thekedar , R/o Talapara Bilaspur Chhattisgarh At Present R/o Imalipara , Bilaspur Tahsil And District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- **Petitioner****Versus**

1. Gram Sewa Samiti Bilaspur Chhattisgarh Through The Manager Gram Sewa Samiti, Imalipara Near Old Bus Stand Bilaspur Tahsil And District Bilaspur CG
2. Chhattisgarh Rent Controller Tribunal Through Its Chairman First Floor Old R D A Building Shastri Chowk Raipur District Raipur CG
3. Rent Control Authority Bilaspur District Bilaspur CG

---- **Respondents**

For Petitioner	:	Ms. Hamida Siddiqui, Adv.
For State	:	Mr. R.K. Gupta, Dy. AG

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Sharad Kumar Gupta, Judge****CAV ORDER****Per Sharad Kumar Gupta, Judge**

1. In this Writ petition, challenge is levied to the order dated 25.1.2018, pronounced by the Chhattisgarh Rent Control Tribunal, Raipur (hereafter, called as 'Tribunal, Raipur') in appeal No. 61-A of 2017 vide Annexure P-1, whereby and whereunder he affirmed the order of the Rent Controller, Bilaspur dated 18.09.2017 pronounced in case No.02/A-90(7) year 2015-16 vide Annexure P-2, whereby he ordered the petitioner to hand over the vacant possession of the disputed accommodation to respondent No. 1 and also pay it arrears of the rent.

2. This is admitted by the petitioner that he is in the possession of the disputed accommodation.
3. In brief, case of respondent No. 1 is that he had rented the disputed accommodation to the petitioner on 15.03.2008 through an agreement; the rent was Rs.5,000/- per month; from October, 2009, the petitioner has not paid the rent; and the disputed shop is required for its own occupation.
4. In brief, the petitioner's case is that there is no relationship of landlord and tenant between respondent No. 1 and him, thus, the application of respondent No. 1 was not maintainable before the Rent Controller, Bilaspur.
5. The Rent Controller, Bilaspur and the Tribunal, Raipur pronounced the orders as aforesaid. Being aggrieved by the impugned order Annexure- P-1, the petitioner preferred this Writ Petition.
6. Ms. Hameeda Siddiqui, counsel for the petitioner strenuously argued that respondent No. 1 failed to prove that the petitioner is its tenant in the disputed accommodation. Thus, Chhattisgarh Rent Control Act, 2011 (hereafter called as 'the Act, 2011') is not applicable in the case in hand.
7. Now we will consider that whether the Rent Controller, Bilaspur as well as the Tribunal Raipur have committed any illegality or perversity in giving the finding that the petitioner was allegedly tenant of respondent No. 1.
8. As per the agreement Ex. P-8, the disputed accommodation was rented to the petitioner by respondent No. 1. As per the alleged

receipt Ex. P-7, the petitioner had deposited rent of Rs. 35,000/- on 25-10-2008 for the period April, 2009 to October 2009.

9. The petitioner had denied his signature on the letters Ex. D-8, Ex. D-10, Ex. D-12, Ex. D-15 and Ex. D-16. Which have been received by the petitioner.
10. The petitioner had written the letter dated 16-2-2012 to the respondent No. 1 that he is repairing the disputed accommodation by fitting tiles by use of rubble and he shall not claim for it in future from the respondent No. 1.
11. It would be pertinent to mention the definitions of Section 2(5) and 2(14) of the Act, 2011 which are extracted below:-

“2 Definitions – (1)..

....

(5) “landlord” means a person, who for the time being is receiving, or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of, any other persons or as a trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to receive the rent, if the accommodation were let to a tenant;

(14) “Tenant” means - (i) the person by whom or on whose account or behalf rent is, or but for, a contract express or implied, would be payable for any accommodation to his landlord including the person who is continuing its possession after the termination of his tenancy otherwise than by an order or decree for eviction under the provisions of this Act and

(ii) In the event of death of the person referred to in

sub-clause (I) -

(a) in case of accommodation let out for residential purposes, his surviving spouse, son, daughter, mother and father who had been ordinarily residing with him in such accommodation as member of his family upto his death;

(b) in case of accommodation let out for commercial or business purposes, his surviving spouse, son, daughter, mother and father who had been ordinarily carrying on business with him in such accommodation as member of his family upto his death.”

12. Looking to the above-mentioned facts and circumstances, material placed on record, definitions, this Court finds that the Rent Controller, Bilaspur and the Tribunal Raipur have not committed any illegality or perversity in giving the finding that the petitioner allegedly is the tenant of respondent No. 1 in disputed accommodation, and there is the relationship of tenant and landlord between the petitioner and the respondent No. 1.
13. In a landlord-tenant case, title of the disputed accommodation is wholly irrelevant. In eviction application or suit based on the landlord-tenant relationship, it is essential for the applicant/s to prove the landlord-tenant relationship, he is the landlord and the opponent is tenant. Not proving these facts leads to dismissal of the eviction application or suit.
14. Now we consider as to whether the Rent Controller, Bilaspur and the Tribunal Raipur have committed illegality or perversity in giving the finding that the petitioner allegedly was a habitual defaulter in payment of rent.

15. In the case in hand, case of the petitioner is that he is not tenant of the respondent No. 1, thus, he is not entitled to get rent from him.
16. The petitioner is not depositing rent since November, 2009.
17. Looking to the above-mentioned facts and circumstances of the case, material placed on record, this Court finds that the Rent Controller, Bilaspur and the Tribunal, Raipur have not committed any illegality in giving the finding that the petitioner was a habitual defaulter in payment of rent and he has not given rent to respondent No. 1 since November, 2009.
18. In **Khimji Vidhu v. Premier High School (AIR 2000 SC 3495)** the Hon'ble Supreme Court has laid down that findings of fact could not have been interfered by the High Court in exercise of its jurisdiction under Article 227 of the Constitution. Jurisdiction under Article 227 of the Constitution must be sparingly exercised and may be exercised to correct errors of jurisdiction and the like but not to upset pure findings of fact, which falls in the domain of an Appellate Court only. In **D.N. Banerji v. P.R. Mukherjee (AIR 1953 SC 58)** the Hon'ble Supreme Court observed that unless there has been grave miscarriage of justice or flagrant violation of law calling for interference, it is not for the High Court under Articles 226 and 227 of the Constitution to interfere.
19. Looking to the above-mentioned circumstances, facts and judicial precedents laid down by the Hon'ble Supreme Court, this Court finds that the writ petition being devoid of merit deserves to be dismissed. At this stage, counsel for the petitioner submits that

the petitioner may be given some time for depositing the arrears of rent. We record this submission.

20. In the result, this writ petition is ordered as follows :-

- (i) The impugned order dated 25-1-2018 Annexure P-1 is confirmed.
- (ii) The petitioner Haji Abdul Rajjak is granted 4 months time to vacate the disputed accommodation on condition that he pays the respondent No. 1 Gram Sewa Samiti, Bilaspur through Manager, Gram Sewa Samiti, Imli Para, the arrears of the rent from November, 2009 to September, 2017 at the rate of Rs. 5,000/- per month within a period of one month from the date of this order and continues to pay the use and occupation charges at the same rate till the possession is delivered. If these conditions are satisfied, the petitioner will have 4 months time to continue in possession.

Sd/-

(Thottathil B. Radhakrishnan)

Chief Justice

Sd/-

(Sharad Kumar Gupta)

Judge