

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.440 of 2009

Jayant Thakkar, aged about 49 years, S/o Shri Lakshmi Das Thakkar,
Director, Kumar Engineer, Workshop No.6, Agrasen Chowk, Link Road,
Bilaspur, Tahsil & Distt. Bilaspur (C.G.)

(Defendant)
---- Appellant

Versus

Smt. Rehana Reyazuddin, aged 63 years, wife of Dr. Riyazuddin, R/o
Link Road, Agrasen Chowk, Bilaspur, Tahsil & District Bilaspur (C.G.)

(Plaintiff)
---- Respondent

For Appellant: Mr. C.D. Sharma, Advocate.

For Respondent: Mr. K.A. Ansari, Senior Advocate with Mrs. Meera
Ansari, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

09/10/2018

1. The substantial question of law involved, formulated and to be answered in this defendant's second appeal is as under: -

"Whether the finding of both the Courts below regarding the bona fide need of the plaintiff's son with regard to suit shop is perverse, particularly, in a case where based on Ex.P.1 and Ex.P.2 the need appears to be of a Company, in which, plaintiff's son – Rashid Riyaz is one of the Directors?"

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

2. The plaintiff instituted a suit for eviction of the defendant tenant on the ground that she is the landlady of the suit accommodation and the said accommodation was let-out to the defendant on monthly rent of ₹ 1,680/- in which the defendant was earlier running Kumar

Engineer Works. The tenancy is monthly which was extended from time to time, but since the defendant failed to pay rent from July, 2015, his tenancy was terminated vide notice dated 23-4-2005 stating that the suit accommodation is required bona fide for the landlady's son for opening a shop, as he is the Director of S.R. Shoes Pvt. Ltd., Kolkata, and her son has been appointed as distributor of the said company for which 3,000 sq.ft. land is required and for the said purpose, the plaintiff has no other alternative accommodation in the township of Bilaspur, therefore, the suit accommodation is bona fide required for non-residential purpose / opening shop of her son at Bilaspur under Section 12(1) (f) of the Chhattisgarh Accommodation Control Act, 1961 (for short, 'the Act of 1961').

3. The defendant by filing written statement denied the averments made in the plaint and also amended the written statement pursuant to the order dated 5-5-2007 holding the documents Exs.P-1 & P-2 as null and void and further averred that the plaintiff has other accommodations in the township of Bilaspur which she has let-out as such, the suit accommodation is not required bona fide by the plaintiff and as such, the suit deserves to be dismissed.
4. The trial Court after framing issues and after appreciating oral and documentary evidence on record held that the defendant is the tenant of the plaintiff and the suit accommodation is required bona fide by the plaintiff for non-residential purpose i.e. opening of shop of her son and she has no reasonably suitable alternative accommodation in the township at Bilaspur and granted decree for

eviction under Section 12(1)(f) of the Act of 1961 along with damages from 27-3-2008 at the rate of ₹ 1,680/- per month.

5. On appeal being preferred, the first appellate Court affirmed the judgment & decree of the trial Court resulting into filing of second appeal in which the substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.
6. Mr. C.D. Sharma, learned counsel for the appellant / defendant, would submit that the documents Exs.P-1 & P-2 are forged documents and as such, they could not have been relied upon by the trial Court and the need is not of the plaintiff's son, but of the said company in which the plaintiff's son is only a Director, therefore, the need is of the Company and not of the plaintiff's son, as such, the concurrent finding recorded by the two Courts below being perverse is liable to be set aside.
7. Mr. K.A. Ansari, learned Senior Counsel appearing for the respondent / plaintiff, would submit that the plaintiff has set up the plea of bona fide requirement of the suit accommodation for her son Rashid Riyaz for opening a shop of S.R. Shoes Pvt. Ltd. for which he was appointed as distributor at Bilaspur which is concurrently held by the two Courts below to be bona fide and it has also been held that the plaintiff has no other reasonably suitable alternative and vacant accommodation in the township of Bilaspur, therefore, the concurrent finding of bona fide need cannot be interfered with being the finding of fact and as such, the second appeal deserves to be dismissed. He would alternatively submit that the defendant has branded the documents Exs.P-1 & P-2 to be forged documents

by amendment made in the written statement pursuant to the order of the trial Court dated 5-5-2007 and he has not set up any plea that the plaintiff's bona fide need is not of her son, but of the company in which her son is one of the Directors, therefore, new plea cannot be permitted to be raised for the first time in the second appeal, as such, the second appeal deserves to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the records with utmost circumspection.
9. The plaintiff clearly pleaded that her son Rashid Riyaz is Director in S.R. Shoes Pvt. Ltd., a company which is involved in manufacture of footwear, and the said company has appointed her son as distributor of Chhattisgarh for selling footwear at Bilaspur for which 3,000 sq.ft. shop is required for showroom and therefore the plaintiff needs the suit accommodation for her son's opening the showroom and she has no other alternative accommodation in the township of Bilaspur. The defendant denied the bona fide need in the written statement averring that the plaintiff has other accommodations which have been let-out to other tenants and by amendment dated 5-5-2007, pleaded that the documents Exs.P-1 & P-2 are forged documents. Ex.P-2 is a document showing that S.R. Shoes Pvt. Ltd. has resolved to open a Distribution Cell at Riyazuddin Complex, Bilaspur and authorised the plaintiff's son to deal with the entire establishment and all operations on behalf of the company, as such, the defendant did not plead in his written statement that need is of the said company not of the plaintiff or her son. If such a

plea has not been taken in the written statement that the need setup by the plaintiff is not of the plaintiff or her son, but it is of the company in which the plaintiff's son is Director, then such a plea cannot be permitted to be raised for the first time in the second appeal by taking the other side by surprise. The defendant was required to take such a specific plea before the trial Court and to establish that the need projected is not of the plaintiff or her son, but of the company in which the plaintiff's son is one of the Directors. Even otherwise, it is the case of the plaintiff from the plaint itself that the suit accommodation is required for opening a showroom of the plaintiff's son which the plaintiff has detailed out in the plaint and as such, in absence of specific plea having been taken in the written statement that the need is of S.R. Shoes Pvt. Ltd. and not of the plaintiff's son, the defendant is not permitted to raise such plea at the stage of second appeal. Moreover, the said plea is not supported by pleading and evidence adduced before the trial Court. Even otherwise, by Ex.P-2 only the plaintiff's son has been authorised to deal with all the operations of the said company at Bilaspur and as such, the defendant has failed to plead and establish that such a plea that need projected by the plaintiff is not of her son, but of a Company in which her son is one of the Directors.

10. Coming to the finding of the trial Court regarding bona fide need, the trial Court upon appreciation of oral and documentary evidence on record has clearly reached to a conclusion while deciding issue No.4 that the suit accommodation is bona fide required by the

plaintiff for opening a showroom of footwear at Bilaspur and she has no other alternative accommodation in the township of Bilaspur which has been affirmed by the first appellate Court by recording a reasoning and finding which is a finding of fact based on the evidence on record.

11. The Supreme Court in the matter of Faruk Ilahi Tamboli and another v. B.S. Shankarrao Kokate (dead) By Legal Representatives and others¹ has considered its earlier decision in the matter of Mattulal v. Radhe Lal² in which it has been held that the question of bona fide need under Section 12(1)(f) of the Act of 1961 is a question of fact and finding is pure finding of fact and High Court should not interfere with the finding of fact, which squarely applies to the facts of the present case. The finding of fact regarding bona fide need of the plaintiff is a concurrent finding of fact recorded by both the Courts below which is neither perverse nor contrary to record as such, the substantial question of law is answered against the defendant and in favour of the plaintiff. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

12. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

1 (2016) 15 SCC 431

2 (1974) 2 SCC 365