

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 2 of 2018**

1. Utsav Dey Son Of Late Shri Arun Kumar Dey, Aged About 54 Years
2. Utpal Dey, Son Of Late Arun Kumar Dey, Aged About 52 Years

Both Residents of Juni Line, N. N. Dey Marg, Mission Hospital Road, Police Station Kotwali, Bilaspur, District Bilaspur, Chhattisgarh

---- Petitioners

Versus

1. Sushil Kumar Bhadraraja Son Of Shri Sitaram Bhadraraja, Aged About 54 Years
R/o Near Rajaram Temple, Gondpara, District Bilaspur, Chhattisgarh. Office
Address- Ravi Chashma, Near Tibbati Woolen Market, Mission Hospital Road,
Police Station Kotwali, Bilaspur, District Bilaspur, Chhattisgarh
2. Rent Controller, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Amrito Das, Advocate with Shri K. Rohan, Advocate
For Respondents	:	No representation is made.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09/08/2018

1. Despite service of notice no representation is made on behalf of the respondents.
2. Challenge in this petition is to the order dated 20.11.2017, whereby the preliminary objection made by respondent tenant was upheld by the Rent

Control Authority, whereby the petitioner herein was non suited in an eviction proceeding.

3. Learned counsel for the petitioners submits that an eviction petition was filed before the Rent Control Authority under Schedule 2 Clause 11 (h) of the Chhattisgarh Rent Control Act, 2011 (hereinafter referred to as 'the Act, 2011') claiming ejectment of the respondents under the Act, 2011. After service of notice a preliminary objection was filed, wherein five objections were raised by the tenant that the notice as prescribed under Schedule 2 Clause 11 (h) of the Act, 2011 was not served. Further objection was to the effect that the agreement of tenancy has not been registered under Section 4 of the Act, 2011 and it was also stated that the mother of the petitioners had filed a similar like nature of petition for eviction against the respondents, which was dismissed by the 7th Civil Judge Class-II, Bilaspur and affirmed by the Court of Additional District Judge in the year 2014. As such the eviction petition filed by the petitioners is not tenable. Learned counsel for the petitioners would submit that the objections were upheld by a cryptic order which resulted into dismissal of the petition for eviction. It is further contended that in an eviction proceeding principles of res judicata could not be pressed into motion and the facts would show that the instant petition for eviction before the Rent Control Authority is filed by the son and after the death of the mother, the fresh eviction petition was filed. It is further stated that the Rent Control Authority without any application of mind has allowed the objection. Referring to the document, the counsel would submit that notices were duly served as contemplated under Schedule 2 Clause 11 (h) of the Act, 2011 and registration of rent agreement under Section

4 would not be mandatory in the facts of the Rent agreement was much prior to the commencement of the Act, 2011. therefore, while the petition was preferred for eviction, the rent agreement was attached with the eviction petition. It is contended that even non-registration of the agreement will not render the petition for dismissal as it is only a directory in nature. He further stated that in respect of the other tenants in the eviction proceedings, the same objection was filed, but the result was in favour of the petitioners. It is stated that after such dismissal of objection the tenants challenged the same before the High Court and the High Court dismissed the petition filed by the tenant. In a result, two contradictory opinions have been arrived at by the Rent Control Authority in a likewise similar nature of petitions accordingly, the impugned order cannot be sustained.

4. Perused the impugned order and the document connected with this petition.

The documents would show that an eviction petition was filed by Utsav Dey & Utpal Dey against the respondent, claiming dispossession from the property under Schedule 2 Clause 11 (h) of the Act of 2011. The Chhattisgarh Rent Control Act, 2011 received the assent of the President on the 5th October, 2012 and of Governor on the 23rd May, 2011, published in the Chhattisgarh Rajpatra (Asadharan) dated the 6th November, 2012. The Schedule 2 of the Act which lays down the Landlord's Rights available under the Act is framed under Section 12 (2) of the Act, 2011.

5. Section 12 (2) of the Act, 2011 reads as under:-

**12. Rights and Obligations of Landlords and
Tenants. -**

(1) xxx xxx xxx

(2) Every landlord shall have rights according to Schedule 2. The Tribunal and Rent Controller shall act at all times to secure to the landlord these rights:

Provided that--

(a) In case of any clash of interests of the landlord and the tenant and/or any point of doubt in respect of matters relating to rent, the benefit thereof shall be granted to the tenant.

(b) In case of any clash of interests of the landlord and the tenant, and/or any point of doubt in respect of matters relating to returning possession of the accommodation to the tenant, benefit thereof shall be granted to the landlord.

6. Schedule 2 Clause 11 (h) of the Act, 2011 reads as under :-

11. Right to seek from the Rent Controller eviction of the tenant on the following grounds :-

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) xxx xxx xxx
- (d) xxx xxx xxx
- (e) xxx xxx xxx
- (f) xxx xxx xxx
- (g) xxx xxx xxx

(h) On 6 months notice to the tenant in writing, without any obligation to assign any reason, but on the condition that the accommodation will not be leased out at a higher rent for atleast 12 months thereafter:

Provided, however, that in case of the following special categories of landlords and/or their spouse desiring the accommodation back for own use, the period of notice shall be one month: current or retired government servants, widows, personnel of the armed forces, persons coming to physical or mental handicap, and senior citizens (above the age of 65 years).

It prescribes that the landlord may seek eviction of the tenant without any obligation to assign any reason with certain restrictions that it will further not be leased out for at least 12 months at a higher rent with just exception. Therefore, under Clause 11 (h) of Schedule 2 right has been created in favour of the landlord to

get an eviction by virtue of the Act of 2011 after 6th November, 2012.

7. The document attached with this petition, the notice dated 13.01.2016 along with the receipt of the postal receipts are on record and the perusal of the notice would show that the averments to the extent of the obligations imposed by Clause 11 (h) of Schedule 2, prima facie appears to have been complied.
8. Now reverting back to Section 4 of the Act, 2011, which reads as under:-

Section 4 - Tenancy Agreement

(1) Notwithstanding anything contained in Section 107 of the Transfer of Property Act, 1882 (Central Act 4 of 1882), no person shall, after the commencement of this Act, let or take on rent any accommodation except by an agreement in writing.

(2) Where, in relation to a tenancy created before the commencement of this Act,--

(a) an agreement in writing was already entered into shall be filed before the Rent Controller.

(b) no agreement in writing was entered into, the landlord and the tenant shall enter into an agreement in writing with regard to that tenancy and file the same before the Rent Controller;

Provided that where the landlord and the tenant fail to present jointly a copy of tenancy agreement under clause (a) or fail to reach an agreement under clause (b) such landlord and the tenant shall separately file the particulars about such tenancy.

(3) Every agreement referred to in sub-section (1) or required to be executed under sub-section (2) shall be in such format and in such manner and within such period as may be prescribed.

9. Sub-section (2) of Section 4 purports that an agreement in writing, if it is existing, shall be filed before the Rent Controller after commencement of the Act of 2011. The said obligation was also made applicable to existing tenancy even before prior to the commencement of the Act. The facts as would suggest in this case that the tenancy in this case commenced way back in the year 1984, therefore, after commencement of the Act, 2011, what would be the effect, if non-compliance comes to fore with respect to Section 4 of the Act, 2011, the Act is

completely silent on this qua the effect for purpose of eviction proceeding initiated by landlord.

10. In this case, the facts as would show the tenancy had already commenced prior to the Act of 2011 came into being. Plain simple reading of sub section (2) of Section 4 creates an obligation on both the tenants and the landlords. The Section purports that when relation to tenancy was created before commencement of the Act of 2011, the agreement so created earlier shall be filed before the Rent Controller. Further if no agreement was created in writing then the agreement ought to have been created and the said agreement would be required to be filed before the Rent Controller. Reading of the provisions of the Act of 2011 indicates that primarily it was created for the benefit of landlord with certain safeguard to the tenant. Reading of the Act of 2011 do not indicate any fatal consequences when eviction petition is filed subsequently by landlord. In other word, the act do not say so that when an agreement is under Section 4 of the Act of 2011 is not registered but eviction proceeding are instituted then the same would be dismissed.

11. The Supreme Court in the case of **Balwant Singh and Others Versus Anand Kumar Sharma and Others**¹ the ratio is reiterated that of the case of **E. Palanisamy V. Pananisamy**² It was held therein that the rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. The new Chhattisgarh Rent Control Act, 2011 came into force in the

¹ (2003) 3 SCC 433

² (2003) 1 SCC 123

year 2012. The reading of new Act of 2011 would show by new Act the parsimonious chance of flashing a smile of landlord is created and is balanced with the right of tenant. The Supreme Court in the case of **Balwant Singh** (supra) has also emphasized the effect of law when no consequence is provided and held that it would be a directory in nature. The relevant extract is reproduced hereunder:-

“7. xxx xxx xxx

“ As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive.”

8. It is in the aforementioned backdrop the decisions of this Court relied upon by Mr Upadhyay are required to be considered.”

12. The Supreme Court in the case of State of **Uttar Pradesh and others Vs. Babu Ram Upadhyay {AIR 1961 SC 751}** has held that it is well established that an enactment in form mandatory might in substance be directory. It was further held that it is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed. The reference is made to Maxwell on "The Interpretation of Statutes", 10th edition, at page 381 and the Court ruled the following:-

“On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them.”

This passage was accepted by the Judicial Committee of the Privy Council in the case of *Montreal Street Rly. Co. v. Normandin* 1917 AC 170: (AIR 1917 PC 142) and by this Court in 1958 SCR 533: ((S) AIR 1957 SC 912).

13. The Supreme Court in the case law of ***Mohan Singh and others Versus International Airport Authority of India*** {(1997) 9 SCC 132} has made a reference to the book of mandate on the construction of statute and has fortified the principle the question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way of the other. The Supreme Court in this case further laid down that Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty.
14. Reading of Section 4 of the Act of 2011 speaks about the tenancy agreement. It shows that notwithstanding anything contained in Section 107 of the Transfer of Property Act, 1882 (Central Act 4 of 1882), the lease shall not be created on rent of any accommodation except by in writing and the tenancy which is continuing before the commencement of the Act, the existing agreement is required to be filed before the Rent Controller and in case of no agreement is existing, the same is required to be executed and thereafter to be filed before the Rent Controller. Reading of Section 4 and the non-compliance thereof, no consequence is provided in the Act of 2011 qua eviction proceeding.
15. The General rule of law is that where a general obligation is created by statute

and statutory remedy is provided for violation, statutory remedy is mandatory. It further held that the scope and language of the statute and consideration of policy at times may, however, create exception showing that legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the Court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under Consideration. In the context of the aforesaid principle, the language of Section 4 is examined, it do not create a duty for non-compliance. Therefore, it can very well be presumed that the obligation as has been provided under Section 4 of the Act of 2011 is directory in nature as non compliance of it do not indicate any consequence qua seeking eviction.

16. Further the effect of such Section if is examined in the light of Section 17 (d) of the Registration Act, 1908 it provides that in case a lease is created for more than a year, the same is required to be registered with the Sub Registrar as otherwise it would have no evidentry value but reading of Section 4 of the new Act of 2011 makes a deviation. This issue probably see another bout of litigation if challenged. So when the object of the Act of 2011 is taken to a logical end, it shows that the Act of 2011 and presence of Section 4 therein primarily to evaluate relation of landlord and the tenant. The object of Section 4 shows if the agreement to the effect of tenancy is registered with the rent

controller he may prima facie look into such terms of tenancy for collectoral purpose. The question arises if non-compliance of Section 4 of the Act of 2011 exists for all the time to come, can the landlord be not permitted to evict a tenant? The answer would be certainly in negative as otherwise the entire object & purpose of the Act of 2011 would be defeated.

17. This Court has to deliberate on this issue for the reason that the order of Rent Control Authority is too cryptic as only by one word it has described that the objection raised by the tenant appears to be justified. When we turn to the objection made by tenant it contains the pleading of non-registration of the tenancy agreement as per Section 4 of the Act of 2011. In view of the the principles as has been stated above, this Court is of the opinion that for non-compliance of Section 4 of the Act of 2011, the landlord cannot be non-suited as it is only directory in nature.
18. The second part of the order wherein some trapping of res judicata can be inferred also appears to be completely misconceived. The perusal of the order of the Additional District Judge in Civil Appeal No.66A/2011, which was decided on 17th of February, 2014 would show that earlier the suit for ejectment was filed by Smt. Pushpa Dey, since deceased. The suit for eviction was dismissed. Against dismissal of eviction proceeding by 7th Civil Judge, Class-II, Bilaspur in Civil Suit No. 07A/2009. Thereafter, an appeal was preferred and the appeal too was dismissed. The facts as would show that the earlier petition for eviction was filed by the mother of the petitioners on different grounds. In that suit eviction was sought claiming bonafide need for the daughter-in-law of the then plaintiff Smt. Pushpa Dey. The Court rejected the contention on the ground that

the eviction could not have been sought for the benefit of daughter-in-law as she is not covered within the definition of “dependent” under the earlier Act. Most importantly in such case during appeal an application was filed by the plaintiff under Order 6 Rule 17 CPC along with an application under Order 41 Rule 27 and amendment was sought to bring in fact along with document that son of the plaintiff Pushpa Dey has been granted some agency, therefore, for his need also the premise is required, however, the Court of Additional District Judge dismissed such contention on the ground that allowing such application would change the nature of the suit.

19. Therefore, the prayer/claim to get the premises vacated on the ground projecting the need of son was not at all considered on merits. It fortified the fact therefore to that the need of the son was not considered by the Court in earlier part of eviction proceeding. Subsequently, the proceeding for eviction was filed before the Rent Controller under the Rent Control Act 2011. Therefore, even after dismissal of earlier proceeding if a new act is promulgated, the beneficiary under the statute can always ring the bell of the Court under permissible grounds seeking eviction.

20. In facts of the case therefore, the principles of resjudicata is completely foreign. The res judicata only operates in respect of the issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title and has been decided. In the instant case on the earlier occasion, the ejectment case was dismissed for the reason that the daughter-in-law cannot be said to be a dependent, but in the

subsequent proceeding before the Rent Controller, the facts were otherwise and the parties were also different and it was under the new statute, therefore, the finding of res judicata by the rent controlling authority is completely perverse and wrong appreciation of facts.

21. It would not be out of place to mention that the petitioner had also filed an ejectment petition in respect of other tenants as there are other tenants too. The tenants therein filed the similar objection, wherein dismissal was sought as similar grounds like that of instant petition. The same is evident from the Annexure P-7 dated 10.04.2014. The said objection of tenants were dismissed by the Rent Controlling Authority. The said dismissal were challenged by those tenants before the High Court in the writ petition WP227 No.521/2017. This Court had dismissed the contention of those tenants by order dated 01.08.2017 which is filed as Annexure P-8. Therefore, two contrary views were taken by the Rent Cotrolling Authority for the reasons best known to it and appears prima facie there was no application of mind which has left the landlord in painful predicament. Under the circumstances, the petition is allowed. The impugned order is set aside. Considering the time as rolled by till date the Rent Control Authority is directed to decide the case on merits within a further period of six months from the date of receipt of this order.

Sd/-

Goutam Bhaduri
Judge

Ashu