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HIGH COURT OF CHHATTISGARH BILASPUR**Order reserved on 26/09/2018****Order delivered on 08/10/2018****Writ Petition (C) No. 1284 OF 2018**

Smt. Nirmala Ratre widow of Late Jugnuram Ratre, aged about 53 years, R/o Bandhwapara, Purani Basti, Raipur, Tahsil and District Raipur, Chhattisgarh.

---- Petitioner/Tenant**Versus**

Amrit Lal Wadhwani S/o Varadmal Wadhwani, aged about 65 years, R/o Lakhe Nagar Dhal, Bandhwapara, In front of Chothe Pan Thela, Purani Basti, Raipur, Tahsil and District Raipur, Chhattisgarh.

---- Respondent/Landlord

For Petitioner	:	Shri Anup Majumdar, Advocate.
For Respondent	:	Shri H.S. Ahluwalia, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V ORDER**Per Parth Prateem Sahu, Judge**

1. By this instant petition, petitioner has challenged the legality, validity and propriety of impugned order dated 23/01/2018 passed by the Chhattisgarh Rent Control Tribunal, Raipur in Appeal No. 60-A/2017, whereby the Rent Control Tribunal has dismissed the appeal of the petitioner and confirmed the eviction order passed by the Rent Controlling Authority, Raipur, Chhattisgarh.

2. Brief facts of the case for disposal of this petition, are that, respondent is owner of the land situated at *Bhandhwapara Purani Basti Raipur* bearing House No. 175/1 (hereinafter referred to as 'the accommodation'). The accommodation was given on rent to the petitioner about five years prior to the filing of the eviction application before the

Rent Controlling Authority, Raipur. The rent was fixed as Rs. 2500/- per month, which is to be paid by fifth of the next month. Rs. 500/- is also required to be paid as additional charge for the use of electric meter for electricity consumption by the tenant. Petitioner has stopped payment of agreed rent from April, 2014 and further looking at the requirement of accommodation for personal use of the landlord, a legal notice through Advocate has been issued for getting the accommodation vacated within a stipulated period. The petitioner replied the notice through Advocate stating therein that the respondent was not owner of the house, as the petitioner had purchased the accommodation.

3. The respondent thereafter filed an application for eviction of the accommodation before the Rent Controlling Authority on the ground as provided in Clause 11(a) & (g) of Schedule-2 of the Chhattisgarh Rent Control Act, 2011 (hereinafter referred to as 'Act of 2011').

4. The said application was replied by petitioner before the Rent Controlling Authority, in which, relationship of landlord and tenant was denied. She has further stated that her husband purchased the accommodation for consideration of Rs.3,00,000/- and an amount of Rs.50,000/- has been paid in the year, 2010 and thereafter, Rs.2500/- was paid per month as installment but no receipt of the said amount was given by the respondent. It was further stated that landlord assured after payment of whole consideration as agreed, sale deed will be executed in her favour. In additional submissions, it has been stated that she had paid Rs.2,66,000/- and only an amount of Rs.34,000/- is required to be paid. In additional submissions, it has been further stated that the landlord should demarcate his property and after proving title of accommodation, then only an application could have been filed for eviction against the tenant. The Rent Controlling Authority on the basis of pleadings made by respective parties have framed as many as six issues for consideration and after conclusion of proceedings held that there was relationship of landlord and

tenant between the parties and also held that the landlord is entitled to get vacant possession of accommodation in question and further passed an order for eviction of petitioner from the accommodation and directed for payment of arrears of rent of 40 months at the rate of Rs. 2500/- per month i.e. Rs.1,00,000/- within a period of one month.

5. The aforementioned order of eviction and deposit of arrears of rent was challenged by the petitioner before the Rent Control Tribunal under the provisions of Section 13 of the Act of 2011. By impugned order, the Rent Control Tribunal after evaluating the pleadings, evidence and other material available on record, dismissed the appeal and upheld the order passed by the Rent Controlling Authority.

6. Learned counsel appearing for the petitioner submits that there was no relationship of landlord and tenant as she is in possession of accommodation as owner. The learned Courts below committed an error in not considering the entire material and evidence while passing the order of eviction and further that the written agreement of tenancy has not been placed on record, therefore, the application for eviction itself was not maintainable and further the action of the respondent authority was without jurisdiction.

7. Per contra, learned counsel appearing for the respondent supported the impugned orders passed by Rent Controlling Authority as well as learned Rent Control Tribunal and submitted that he is owner of accommodation. The accommodation was given on rent and the plea of purchasing the accommodation was false and baseless.

8. We have heard learned counsel appearing for the parties and perused the documents annexed with the petition.

9. Under the Chhattisgarh Rent Control Act, 2011 the grounds for eviction of tenant from accommodation is provided under Clause 11 of Schedule 2, which is reproduced herein below :-

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

- (a) If the tenant is a habitual defaulter in payment of rent and/or other dues.
- (b) If the tenant causes, or allows to be caused, substantial damage to the accommodation, for any reason whatsoever.
- (c) If the tenant uses the accommodation for purpose(s) other than that for which it was leased out.
- (d) If the tenant becomes a social nuisance.
- (e) If the tenant is convicted under any section of the Indian Penal Code.
- (f) For carrying out major renovation work which is not possible with the tenant housed in.
- (g) On 3 months notice to the tenant in writing, if the accommodation is required for own occupation and/or occupation by any member of the family including spouse, parent(s), son(s), daughter, daughter(s)-in-law, son(s)-in-law.
- (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)."

10. A bare perusal of Clause II of Schedule 2 of the Act of 2011, the grounds available to landlord for evicting the tenant has been specifically prescribed i.e. habitual defaulter, for personal need by issuing three months' notice and without assigning any reason by issuing six months' notice along with other grounds.

11. Coming to the facts of the present case, respondent had proved the documents relied upon by him i.e. sale deed (Ex. P/1), tax receipt of the accommodation (Ex. P/2), water tax receipt (Ex. P/3) showing his title and also the eviction notice dated 03/12/2014 (Ex. P/5) and postal receipt of the eviction notice (Ex. P/6). The respondent had also proved other documents placed on record in his evidence.

12. The petitioner in the writ petition before this Court pleaded that old relationship of the landlord and tenant came to an end by execution of an agreement dated 10/02/2009. The case of the petitioner herself is that she purchased and took possession of accommodation from respondent. This shows that the respondent owned and possessed the accommodation prior to entry of petitioner.

13. From scrutiny of order passed by authority, facts and evidence as discussed by Rent Controlling Authority in its order dated 29/07/2017, it is apparent that the petitioner stated that the possession of accommodation was taken from the respondent and on 16/02/2009, an amount of Rs.50,000/- was paid against sale consideration of Rs.3,00,000/- and further stated that she is continuously paying Rs.3000/- per month for balance amount of sale consideration. The fact of agreement of sale and payment of total amount of Rs.2,66,000/- was only based on oral evidence and no documentary evidence was produced by the petitioner before the Rent Controlling Authority, with regard to sale agreement, as pleaded by her. The tax receipt (Exhibit D-1) produced by her does not bear house number and identity of the property for which the tax as stated to have been paid by the petitioner. Even otherwise the receipt bears the date of May 2015 i.e. after issuance of eviction notice dated 04/12/2014. The petitioner in her evidence has also admitted that she was not having any paper receipts with regard to purchase of accommodation and payment of installment. She in Paragraph-18 of her evidence has admitted that the electric meter which is installed in the accommodation was in name of

respondent. The petitioner has further admitted that the balance amount of Rs.34,000/- is outstanding.

14. The other witness examined on behalf of petitioner is Raju Nirala (NAW-2), who stated that there was no interaction between the petitioner and NAW-2 prior to stay in accommodation and there was talking terms with her husband. He further stated that husband of petitioner came to his house and on his asking, the husband of petitioner intimated him that he had purchased the accommodation and in front of him, husband of the petitioner had given Rs.50,000/- to respondent after counting it. He further stated that he suggested for execution of document after payment of amount of Rs.50,000/-, but the same was not executed. Statement of this witness with respect to sale consideration is shaky as he himself is not aware of exact sale consideration and stated that the house was purchased for Rs. 2-3 Lakhs.

15. Another witness Rajesh Bhaghel (NAW-3) specifically stated in his evidence that when he came to the Court for recording his statement, he has been told that the petitioner has purchased the accommodation. No document has been shown to him with regard to sale transaction. He further stated that he is not aware from whom the accommodation was purchased and for what consideration. He also stated that he is not aware of anything with respect to house of petitioner (tenant).

16. From the aforementioned discussions, it is evident that petitioner has failed to prove the pleading with respect to purchase of accommodation from respondent, whereas from the above, it is clear and evident that the possession of the accommodation had been taken by the petitioner from the respondent. The petitioner after filing of petition before this Court, at the time of hearing has placed one photocopy of document with the heading of "*Malma Bikri Nama*" though the documents in support of pleadings are required to be filed before the appropriate authority at appropriate stage and the same is to be proved in evidence by the party,

therefore, the said document cannot be taken as additional document in support of the pleadings of the petitioner and that too when no proper application is filed.

17. Even otherwise, perusal of the said document filed as additional document shows that contents of the document are contrary to pleadings and evidence made by the petitioner before the Rent Controlling Authority. In document produced by the petitioner, it has been mentioned that the accommodation has been purchased for Rs.3,50,000/- and whole amount of consideration has been paid on the date of execution of document itself i.e. 10/02/2009. The said document bears name of petitioner and her thumb impression also appears on the document whereas petitioner only pleaded and made statement with respect to payment of Rs.50,000/- only initially and part of balance amount in installment and that no document was executed. Even the said document bears the signature of Raju Nirala (NAW-2), but in his evidence, he has specifically stated that no document has been executed by the purchaser at that time. This also shows that the petitioner has made all efforts and attempts just to deny the title of the landlord only with an ill-intention.

18. The other ground as raised by the learned counsel appearing for the petitioner that the application is not maintainable for want of written rent agreement between the parties in view of Section 4 of the Act of 2011. The petitioner has also not raised any objection with regard to maintainability of the petition for want of written tenancy agreement in her reply to the application for eviction. It will be beneficial to glance Section 4 of the Act of 2011, which reads as under:-

“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.”

19. Sub-section (3) of Section 4 of the Act of 2011 provides that the agreement referred in sub-section (1) or under sub-section (2), time and its format will be prescribed. The format of agreement has been prescribed under the Rules i.e. Chhattisgarh Rent Control Adaptation Rules, 2016 (hereinafter referred to as “Rules of 2016”), which came into force by notification dated 01/03/2016 and have been framed in exercise of powers conferred under sub-section (1) of Section 13A of the Act of 2011. Rule 14 of the Rules of 2016 provides for an agreement, which reads as under:-

“14. Agreement.- According to sub-section (3) of Section 4 of the Act, every agreement shall be in FORMAT-1 and it shall be presented before the Rent Controller within a period of one month from the date of execution by the landlord.”

20. The format of an agreement and the period for its presentation before the Rent Controlling Authority was provided under the Rules of 2016 (which came in effect only on 01/03/2016) whereas the application

for eviction has been filed on 15/06/2015. In the present case, the tenancy is of somewhere of 2009 by oral agreement, whereas Rules of 2016 came into force after filing of the application for eviction, therefore, the provisions of Section 4 of the Act of 2011 will not apply to the facts and circumstances of the case.

21. There is concurrent finding of facts recorded by Rent Controlling Authority, Raipur, Chhattisgarh and Chhattisgarh Rent Control Tribunal, Raipur that the petitioner is a tenant of the respondent and she was a habitual defaulter in payment of rent and other dues and also that the respondent is entitled for vacant possession of the accommodation.

22. In view of the above, we do not find any ground to interfere with the impugned order dated 23/01/2018 passed by the Chhattisgarh Rent Control Tribunal, Raipur in Appeal No.60-A/2017.

23. In the result, the petition being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge