

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 112 OF 2015**

Ajit Singh (Dead) through Legal Representatives:-

1-a Harjit Kaur W/o Late Ajit Singh, Aged about 73 Years, 566, Gopalpura Bypass, Jaipur (Rajasthan).

1-b Samarjit Singh S/o Late Ajit Singh, Aged about 57 Years, R/o Ramniwas Talkies Road, Gandhi Chowk, Raigarh (C.G.).

---- Applicants**Versus**

Savitri Devi W/o Late Baijnath Agrawal, R/o Gandhi Ganj, Raigarh, Tahsil and District Raigarh (C.G.)

---- Non-applicant

For Applicants	:	Mr. Arvind Shrivastava, Advocate.
For Non-applicant	:	Mr. Rakesh Pandey, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Order On Board****10/07/2018**

- The applicants who are tenant facing the eviction proceeding before the Rent Controlling Authority have challenged the legality and validity of the order dated 13/10/2015 passed in Eviction Case No. 1/A-90(1)/2008-09 by the Rent Controlling Authority, Raigarh (C.G.) (in short 'RCA'), whereby the RCA dismissed the applications filed by the tenant under Order 14 Rule 5 of Code of Civil Procedure, 1908 (in short 'C.P.C.') for framing additional issues, under Order 8 Rule 9 of C.P.C. read with Rule 16 of the Chhattisgarh Accommodation Control Rules, 1966 (in short 'the Rules of 1966') and under Section 151 of

C.P.C. for recalling the order dated 07/09/2015, in which, the cost of Rs. 1750/- has been imposed on the applicants/tenant.

2. Learned counsel appearing for the applicants submits that the RCA had not discussed in the order with regard to deciding the application under Order 8 Rule 9 of C.P.C. but even then the said application has been dismissed along with other applications. He further submits that the application under Order 14 Rule 5 of C.P.C. for framing of additional issues has been dismissed in a mechanical manner without mentioning specific reason for doing so and further that the tenant have not taken the number of dates of adjournment as mentioned in the impugned order, but he had filed only two applications i.e. under Order 17 Rule 1 of C.P.C. on two dates, therefore, looking to the facts, imposition of heavy cost of Rs. 1750/-, ought to have recalled.
3. Per contra, learned counsel appearing for the non-applicant/landlord submits that the applicants/tenant for one or other reason wants to possess the suit accommodation and only to linger on the proceedings of eviction pending before the RCA since 2007, is filing frivolous applications. He further submits that earlier the tenant filed a civil suit for specific performance of contract, which was dismissed and thereafter, first appeal preferred by the tenant being First Appeal No. 40/1993, which was also dismissed by the High Court vide its order dated 08/07/2005. He further submits that the impugned order passed by RCA was just and proper. He lastly submits that as the issues have been framed on 17/08/2012 after considering the pleadings of both the parties, no additional issues are required to be framed.
4. I have heard the learned counsel appearing for the parties and perused the document and material available on record.

5. From perusal of the records, it is evident that the RCA on the basis of the application under Section 23-A of the Chhattisgarh Accommodation Control Act, 1961 (in short 'the Act of 1961') as well as the reply to the said application has rightly framed the issues as Annexure A-7 and so far as the issue with regard to the limitation is concerned in the reply to the application under Section 23-A of the Act of 1961, the tenant has only pleaded that the application is barred by limitation under the provisions of Article 65 of the Indian Limitation Act. The provisions of Article 65 of the Indian Limitation Act certainly would not apply in the proceedings of eviction of a tenant by the landlord under Section 23-A of the Act of 1961, therefore, the RCA has rightly dismissed the application under Order 14 Rule 5 of C.P.C. filed by the applicants.
6. The other applications which the applicants/tenant have filed under Section 151 of C.P.C. for recalling of the order of imposition of cost of Rs. 1750/-, that application in its form itself is not maintainable as the provisions of Section 151 of C.P.C. cannot be used where the specific provision has been provided in the C.P.C. seeking relief, which has been sought in the application under Section 151 of C.P.C. The provisions of Section 151 of C.P.C. can only be used in gray area where no specific provision is provided under the C.P.C. The RCA has rightly mentioned that the applicants/tenant could have challenged the order dated 07/09/2015 before the competent forum, but they have not done so. In view of the discussion above, the RCA has not committed any jurisdictional error in dismissing the application under Section 151 of C.P.C.
7. So far as the dismissal of the application under Order 8 Rule 9 of C.P.C. read with Rule 16 of Rules of 1966, from perusal of the impugned order, it is apparent that there is nowhere mentioned or discussed with regard to the consideration of application under Order 8 Rule 9 of C.P.C. by the RCA, but it is apparent that the

RCA had mentioned that all the applications are dismissed. It is the duty of the authority to deal with all the applications separately if it is deciding more than one application by one order and to dispose off the same by assigning reasons for allowing or rejecting the same.

8. In view of the above, RCA has committed the jurisdictional error in not considering and deciding the application under Order 8 Rule 9 of C.P.C. by a reasoned order, therefore, the said part of the order dismissing the application under Order 8 Rule 9 of C.P.C. is hereby set aside. Accordingly, the case is remanded back to the Rent Controlling Authority, Raigarh and it is directed that the RCA will consider the application filed by the applicants/tenant under Order 8 Rule 9 of C.P.C. read with Rule 16 of Rules of 1966 afresh and to decide the same after giving an opportunity of hearing to both the parties in accordance with law.
9. The parties are directed to appear and make their submissions on the next date of hearing after producing the certified copy of this order and the parties will not seek any adjournment. Looking to the long pendency of the eviction case, which is pending before the authority for last about 9 years and also looking to the age of non-applicant at present to be about 70 years, it is expected that the RCA will make its all endeavors to conclude the proceedings expeditiously.
10. With the aforesaid observations/directions, the civil revision is disposed off.
11. No order as to costs.

Sd/-
(Parth Prateem Sahu)
Judge