

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on: 31/01/2018

Judgment delivered on: 13/03/2018

FA No. 6 of 2015

- Pramod Kumar Dewda S/o Late Mahavir Prasad Dewda Aged About 50 Years R/o Main Road, Korba, Tah. And Distt. Korba C.G., Chhattisgarh

---- Appellant

Versus

1. Ashok Kumar Modi S/o Late Kishan Lal Modi Aged About 52 Years R/o Main Road, Korba, Tah. And Distt. Korba C.G., Chhattisgarh
2. State Of Chhattisgarh Thru- Collector, Korba, Distt. Korba C.G., District : Korba, Chhattisgarh

--- Respondents

For Applicant – Shri Shreekumar Agrawal, Senior Advocate with Shri Anand Kumar Gupta, Advocate.

For Respondent No.1– Shri Rajeev Shrivastava and Shri Ashutosh Shukla, Advocates.

For Respondent No.2/State – Shri Anupam Dubey, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV JUDGEMENT

13-03-2018

1. This appeal has been preferred against the judgment and decree dated 24-12-2013 passed in Civil Suit No.2A/2013 by the Additional District Judge (FTC) Korba by decreeing the suit in favour of Respondent No.1 and granting relief as prayed for.
2. It is admitted that Respondent No.1 is landlord of the tenanted premises and the Appellant is his tenant.
3. Respondent No.1/plaintiff has pleaded in his plaint, that by agreement in the year 1968 possession of tenanted premises was given to the father of the appellant for a rent of Rs.91/- per month. Father of the Appellant without permission of Respondent No.1 has raised some construction on the backside of the tenanted premises, because of which, the dispute arose which was compromised on 01-11-1977 and the

rent was resettled at Rs.175/- per month. Later on, father of the Appellant again added some construction, on objection made by Respondent No.1, again rent were settled at Rs.600/- per month in August 1990. But, thereafter, a haller mill has been established by the Appellant in the said tenanted house. It is pleaded that the applicant is neither paying rent nor has any intention to vacate the tenanted premises from August 1990 till the date of filing of civil suit in May, 2007. A total arrears of rent Rs.1,02,200/- against the Appellant after including the damages, a total Rs.1,51,200/- is to be realized from the Appellant.

4. The plaintiff has pleaded that the suit house is located on the main road of Korba-Champa. Respondent No.1 through his representative and Advocate has sent intimation to the Appellant to pay arrears of rent and vacate the tenanted premises. On refusal of the Appellant, the suit has been brought. It is pleaded that Respondent No.1/plaintiff needs the tenanted premises bonafidely for extension of his business, for which Respondent No.1/plaintiff does not have any other suitable accommodation in the locality. Prayer for getting vacated suit premises is also made on this ground that the Appellant had without permission of landlord raised and added additional construction in the tenanted premises and that the tenanted premises is in dilapidated condition and further that the Appellant is attempting to transfer the tenanted premises to some other person and that the Appellant has challenged the title of Respondent No.1/plaintiff. Hence, it was prayed that the reliefs be granted of eviction of the appellant from the suit premises and payment of arrears of rent and damages.

5. The Appellant/defendant has admitted that initially the rent of the

tenanted premises was Rs.91/- per month and thereafter the rent was raised to Rs.175/- on 01-11-1977. It is denied that by agreement between Respondent No.1 and father of the Appellant rent was raised to Rs.600/- in August 1990. Pleadings in the plaint are denied, that the Appellant side has raised construction in the tenanted premises without permission of the landlord and thus has caused damages and that the Appellant has established Haller mill in the tenanted premises. It is denied that Respondent No.1 ever gave any intimation to the Appellant side to deposit the arrears of rent and to vacate the suit premises. It is denied that the Appellant ever challenged the title of Respondent No.1. It is pleaded that with the permission of Respondent No.1, the additional construction has been raised by father of the Appellant by investing his own money. Initially, father of Respondent No.1 brought a civil suit in the Court of Civil Judge Class-II Katghora registered as 18B/75 and by the compromise dated 01-11-1977 in that suit, the rent was raised to Rs.175/- per month. Father of the Appellant has never agreed for raising the rent to Rs.600/- per month in August 1990. The said agreement dated 20-08-1999 is forged. It is pleaded that Respondent No.1 has himself refused to receive the rent after August 1990. The Appellant has tried to pay rent by sending it through money-order which was not received and then he paid rent of 27 months by pay order of State Bank of India to Respondent No.1 of which no receipt was given to the Appellant. Denying all the grounds raised in the plaint for eviction of the Appellant from the suit premises, it is pleaded that the ground of bonafide need for extension of business of Respondent No.1 is without any basis. Respondent No.1 has in his possession sufficient and suitable

accommodation for his business by the side of the suit premises. No ground is available in favour of Respondent No.1 for eviction under Section 12(1) of the Accommodation Control Act, 1961 (in short 'the Act, 1961'). On contrary, the Appellant needs the suit premises bonafidely for his residence and business having no other suitable accommodation available to him, whereas, Respondent No.1 has numerous suitable accommodation in the said locality in his name as well as in the name of his brothers, which contradicts the ground of bonafide need for extension of business. Prayer was made to dismiss the suit.

6. The trial Court framed issues and after affording opportunities to both the parties to bring evidence before the Court, impugned judgment has been passed, in which, it was held that Respondent No.1 is entitled to receive rent of three years Rs.21,600/- from the Appellant. It was held that by raising construction without permission of the landlord substantial damage has been caused to the tenanted premises. It was also held that the suit house is bonafidely required by Respondent No.1 for extension of his business. It was further held that the tenanted premises has become unsafe for human inhabitation and it was also found proved that the Appellant has made use of the tenanted premises for unlawful and immoral purposes. It was held that the Appellant was liable to compensate Respondent No.1. On the basis of these findings the suit was allowed and decree was granted for eviction of Appellant from the suit house, payment of Rs.21,600/- to Respondent No.1 by the Appellant and for compensation Rs.10,000/- to be paid by the Appellant to Respondent No.1.

7. The grounds raised in this appeal are these that the judgment and decree passed by the trial Court is erroneous, against the law and principles. Issue was required to be framed regarding the dispute for rent, non framing of such issue it vitiates the judgment and findings of the trial Court. Respondent No.1 has miserably failed to prove the bonafide need for extension of business as the availability of suitable business, premises with Respondent No.1 was never denied. Non-inclusion of the necessary party in the suit was also a ground for its dismissal. Although a finding has been given that the tenanted premises is dilapidated and needs reconstruction, but no order has been passed for redelivery after reconstruction, because of which, the judgment and decree is liable to be set aside. It is prayed that the appeal be allowed and the impugned judgment and decree be set aside.

8. Learned counsel for the appellant submits that the real dispute between the Appellant and Respondent had been for enhancement of rent, which is demonstrated from the agreement dated 01-01-1968 (Ex.-P/6) and thereafter agreement dated 01-11-1977 (Ex.-P/7). Notices were sent to the Appellant for enhancement of the rent before filing of the suit and subsequent to that interim rent has been fixed under the provision of Section 13(2) of the Act, 1961. As pleaded by the plaintiff the agreement of August 1990 is forged as the original document of this agreement was never produced before the Court. Hence, the order passed by the Court fixing interim rent had been erroneous and without any basis. All the notices that have been received by the Appellant from Respondent No.1 speak of enhancing the rent which shows that real dispute was only about enhancement of rent, between the Appellant and Respondent

No.1. It is submitted that notices under Section 12(1)(a) of the Act, 1961 was never served upon the Appellant. It is further submitted that no ground has been established by Respondent No.1 to show that he has a bonafide requirement of the rented premises and it was never denied by the witnesses of the plaintiff that suitable accommodation for running business of Respondent No.1 was always available to him in the town concerned. The trial Court itself has given finding in paragraph 29 of the judgment that it has been proved that Respondent No.1 are businessmen who have show-room of Hundai car and motorcycle and also dealer for various products of the company. It was also found proved that Respondent No.1 has received vacated possession of two other accommodation by the side of the said premises as a result of decree passed by the Court which is in dimension 54 x 158 feet and is suitable for the business as it is by the side of the main road. Hence, it was erroneously held by the trial Court that Respondent No.1 required this tenanted premises bonafidely. Reliance has been placed on the judgment passed by this Court in the matter of **Natthulal Vs. Kishorila, reported in 2005(1) C.G.L.J. 282**, in which it is held that when there is evidence to show that plaintiff has in his possession identical accommodation of same measurement adjacent to the suit accommodation and that the plaintiff has refused to receive the rent from the defendant, in that case, the ground of bonafide requirement is not made out. Further, reliance has been placed on the judgment passed by Hon'ble the Supreme Court in the matter of **Deena Nath Versus Pooran Lal, reported in (2001) 5 SCC 705**, in which it is held that on availability of proof of alternative and suitable accommodation, requirement of

landlord cannot be held as bonafide.

It is prayed that the impugned judgment and decree be set aside.

9. Counsel for Respondent No.1 submits that plaintiff as clearly established the grounds for eviction under Section 12(1)(a) and 12(1)(f) of the Act, 1961. Further compliance was also made with respect to provision under Section 13(1) of the Act, 1961 by the plaintiff side. It is submitted that circumstances had arose on the date of filing suit that Respondent No.1/plaintiff required the suit premises for extension of his business. The trial Court has observed in paragraph 26 of the judgment that the suit premises was being used by the Appellant for immoral and illegal purposes and it was also observed in paragraph 31 of the judgment that it shall be the decision of the landlord as to which accommodation available to him is suitable for him. A tenant has no right to assess the suitability of the available accommodation of the landlord.

It is submitted by learned counsel for Respondent No.1 that the statement of plaintiff Ashok Kumar Modi in paragraph 51 has been wrongly interpreted as the statement given is a general statement that usually when the tenant enhanced the rent in a new agreement, they are not vacated, this had not been admission with respect to this Appellant.

On behalf of Respondent No.1 reliance has been placed in the judgment passed by Hon'ble the Supreme Court in the matter of **Syed Dastagir Versus T.R. Gopalakrishna Setty, reported in (1999) 6 SCC 337.**

Further reliance has been placed on the judgment passed by Hon'ble the Supreme Court in the matter of **Nidhi Versus Ram Kripal Sharma (dead) through legal representatives, reported in (2017) 5**

SCC 640.

Reliance has also been placed on behalf of Respondent No.1 on the judgment passed by Hon'ble the Supreme Court in the matter of **Sobhagyamal and Another Versus Gopal Das Nikhra, reported in (2008) 3 SCC 788.**

It is submitted that in Nidhi Versus Ram Kripal Sharma (supra) case, Hon'ble the Supreme Court clearly held that the courts have power to take notice of subsequent events regarding bonafide requirement of landlord.

Therefore, it is prayed that the Appeal be dismissed.

10. In reply, learned counsel for the Appellant submits that as Section 13 of the Accommodation Control Act, 1961 has been complied with, hence no decree of vacation could have been granted. The dispute was regarding enhancement of rent was clearly established from the notices that have been exhibited by the plaintiff side. Hence, no case was made out for vacation of the Appellant from the tenanted premises.

11. The points for determination in this case in this appeal are as follows :

- Whether the dispute between appellant-tenant and respondent-landlord was limited to the enhancement of rent of tenanted premises and non-framing of issue regarding dispute for rent has any effect ?
- Whether the respondent/complainant had succeeded in proving bonafide need of tenanted premises for commercial purposes?

12. Plaintiff/respondent No.1 Ashok Kumar Modi PW-1, herein has stated about the tenancy, enhancement of rent by agreement dated 01.11.1977 and further enhancement of rent in the month of August 1990. It is stated by him that subsequent to enhancement of rent in the month of August 1990, no rent was paid by the appellant. In the cross-examination, the plaintiff/respondent No.1 herein has stated that in reply to the notice (Ex.P-19) sent by him through his counsel, the appellant herein has denied that monthly rent of the tenanted premises is Rs.600/-. It has been further stated that no receipt of rent was issued to the complainant after August, 1990. A suggestion put to the plaintiff/respondent No.1 herein that he intended to enhance the rent of tenanted premises only, has also been denied.

13. Learned counsel for appellant has drawn the attention of this Court to the statement of admission made by plaintiff/respondent No.1 herein in paragraph No.52 of his deposition, in which, he has admitted that if a new agreement were executed enhancing the rent of tenanted accommodation, the eviction would not have been asked for. The argument is submitted on behalf of appellant that this shows that the plaintiff/respondent No.1 only intended that the rent of tenanted premises should have been enhanced.

14. Learned counsel for respondent in reply submitted that in a landlord-tenant dispute about increase in rent the eviction is normally not asked for, but this analogy cannot be made applicable in this case as here the enhancement of rent was asked for years' back from the date on which the suit for eviction was instituted i.e. 2007, and during the passage of time, the ground of bonafide need of tenanted premises has

accrued. Relying on the judgment of the Supreme Court in Nidhi Vs. Ramkripal, reported in 2017(5) SCC 640, it is submitted that subsequent event on the basis of which ground of bonafide requirement of the landlord accrues has to be considered by the Court. Nothing could be elicited in the cross -examination of the plaintiff (PW-1) to show that suit for eviction has been filed with intent to pressurize the tenant to succumb to the demand of enhancement of rent.

15. Jugal Kumar Agrawal (PW2) supporting the version of the plaintiff (PW1) has stated in his cross-examination that he is aware about the agreement entered between the parties regarding enhancement of rent to Rs.600/-. Apart from that there is nothing in the statement of this witness showing that the intention of plaintiff/respondent No.1, at the time of filing of suit, was to get the rent increased.

16. Bhagwati Prasad (PW3) has made similar statement in his cross examination to support the ground raised by the appellant in this appeal.

17. Pramod Kumar Dewda (DW1) while admitting the landlord-tenant relationship, has stated that initially the tenancy was of Rs.91/- per month. On 1.11.1977 the monthly rent was enhanced to Rs.175/-. He has denied that any agreement was executed between the parties fixing the monthly rent at Rs.600/-. He has further stated that since the plaintiff/respondent No.1 had stopped accepting monthly rent of the tenanted accommodation from June, 1990, the same was sent to him through money order, but the landlord refused to accept the same and therefore the rent was sent through pay-order of State Bank of India, Korba with acknowledgement due and despite accepting the entire rent,

no receipt was issued to him. He has further stated that notices issued by the landlord were duly replied by him showing his willingness to deposit monthly rent and also he requested the landlord to inform the mode of payment of rent, but he was not replied. He has further stated that pursuant to the order passed by the Court, he is regularly depositing the interim rent. There is no whisper in his examination-in-chief that the real intention of plaintiff/respondent behind filing of suit was to get the rent enhanced. Even in his cross examination there is nothing to suggest that the real dispute between appellant and respondent was regarding enhancement of rent.

18. Considering the specific statement of plaintiff, defendant and their witnesses regarding the issue before this appeal, it appears that there is no evidence that after the year 1990 and before filing of suit for eviction any proposal was given by the respondent for enhancement of rent. There being no specific pleading made by appellant/defendant in written statement that the real dispute between the parties was for enhancement of rent and neither any such statement has been made by him in his deposition before the Court and further there is no such admission on the part of the plaintiff's witness, it is difficult to infer that the real dispute between the appellant and the respondent had been about the enhancement of rent. Accordingly, the first question is answered in negative and thus non framing of issue on this point has no effect.

19. Considered on the second point for determination. Plaintiff / respondent No.1 (PW-1) has stated in his examination-in-chief that the tenanted accommodation is bonafidely required by him for commercial purposes. According to him, the premises in which he is running his

business establishment is very small and for expansion of his business he is in need of reasonably suitable accommodation. In cross examination, he has admitted that dimension of his business premises is 40x40 sq. ft. and the area of other shops in which dealership of Bajaj Auto & Hyndai Motors is being run is more. He has also admitted that he is having agency of Godrej company. He has stated that tenanted accommodation is constructed over 18x35 sq. ft. and there is an open land at the back side of tenanted accommodation. He has further stated that he had started his agency 18 years prior to the filing of suit and with the passage of time the business has flourished. He admits that except one shop, other shops have been vacated by the tenants and the same are in his possession. He got the dealership of Hyndai company 3 to 4 years prior to recording of his statement in the Court. He has further stated that since the year 1990 he started feeling the requirement for expansion of business. There is no such statement made by this witness in his cross-examination that he possession of other vacant accommodation is sufficient and suitable for the expansion of his business.

20. PK Dewda DW-1 has stated in his examination-in-chief that adjacent to the tenanted premises, two accommodation, which were earlier in possession of Rewalal & Babulal, are lying vacant and if there is a real need for expansion of the business, then the available vacant accommodation could be regarded as suitable. In the cross-examination, he has admitted that the complainant is engaged in the business of running agencies of various companies and various commodities. He denied that looking to the business of the complainant, the complainant

is in bonafide need of the tenanted premises. In substance, he has not made any admission regarding bonafide need of the plaintiff and on the contrary stated that plea of bonafide need has no substance.

21. Learned counsel for appellant has drawn attention of this Court towards the observation made by the trial Court in Paragraph No.29 of the impugned judgment that the plaintiff is already in possession of two shops situated adjacent to the suit accommodation and if the suit accommodation is also included in the said two shops then the plaintiff will have total area of 54x158 sq. ft. over the main road of the city which can be regarded as suitable for his business.

22. Learned counsel for respondent submits that in deciding as to whether the alternative accommodation available with the landlord is reasonably suitable or not, the judgment of landlord shall prevail, as has been held in **Raghvendra Kumar Vs. Firm Prem Machinery & Co Respondent**, reported in **AIR 2000 SCC 534**.

23. On due consideration of the evidence of complainant and defendant, it appears that there is no dispute that respondent/complainant is already doing business at large scale and there is no dearth of means on his part to extend his business. Statement made by the complainant before the Court regarding his intention to expand his business remain un-rebutted.

In Damodar Sharma and another Vs. Nandram Deviram's case reported in AIR 1960 MP 345, it was held by the full Bench of MP High Court, that if the business of land lord had grown in fact, and it can be determined objectively then for the purpose of expansion of business of

landlord the tenant is liable to be evicted.

24. The provision under Section 12(1)(f) speaks that the accommodation let for non-residential purposes is required bonafide by the landlord for the purpose of continuing or starting his business etc. and that the landlord has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned, then he is entitled for relief of eviction of tenant. The suitability of premises has to be tested on the ground of reasonability of bonafide requirement. Evidence on record goes to show that the respondent No.1 is a businessman of large scale. Although, he has two other accommodations adjacent to his present place of business, but it is settled position of law that the landlord is the best Judge to determine as to what is his requirement and what is the proper place of his business. According to PW-1, in recent past he has obtained agency of Hyundai Company, which is engaged in manufacturing of automobiles, and for running agency of such business considerable space is required. If the landlord wants to expand his business, he cannot be forced to carry out his business in accommodation available to him in negligible dimension. Hence, for these reason and on the basis of the findings herein above, I am of this view that on the basis of preponderance of probabilities to plaintiff/respondent No.1 has successfully proved objectively, that he bonafidely requires suit accommodation for expansion of his business or his family business. Accordingly, the second question is answered in affirmative and thus in favour of the landlord being the respondent No.1 herein.

25. On the basis of findings hereinabove this appeal is devoid of merits. Hence, this appeal is dismissed. No orders asto costs. Decree be drawn accordingly.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Aadil/Nisha

