

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2802 of 2018

Reserved for order on 31/10/2018

Delivered on 15/11/2018

- Tushar Kanti Ghosh S/o Late Sunil Kumar Ghosh Aged About 59 (55) Years R/o Indira Colony, Tarbahar, Bilaspur, Tahsil And Distt. Bilaspur (CG) Police Station Tarbahar, Distt. Bilaspur (CG)

**---- Petitioner
(Tenant)**

Versus

1. Utsav Dey, aged about 56 years
2. Uttpal Dey, aged about 54 years

Both are sons of Late Arun Kumar Dey, R/o. Old Law College, Mission Hospital Road, Police Station- City Kotwali, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

3. The Rent Controlling Authority, Bilaspur, District Bilaspur (CG)
4. Chhattisgarh Rent Control Tribunal, Raipur, District Raipur (CG)

---- Respondents

For Petitioner	:	Shri A.N.Bhakta, Advocate
For Respondent No.1 & 2	:	Shri Amrito Das, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, CJ
Hon'ble Shri Parth Prateem Sahu,J

CAV Order

Per Parth Prateem Sahu, J

15/11/2018

1. The tenant/petitioner has preferred this appeal assailing the order dated 14.9.2018 (Annexure P-2) passed by respondent No.4-Chhattisgarh Rent Control Tribunal, Raipur in Rent Control Appeal No.36-A/2018 whereby the appeal preferred by the landlords/respondents No.1 & 2 has been allowed and the order of respondent No.3-Rent Controlling Authority, Bilaspur dated 8.1.2018 (Annexure P-2) dismissing the application for eviction of tenant from the rented premises, has been set aside.

2. Brief facts of this appeal are that on 15.1.1984 the petitioner herein entered into a rent agreement with Late A.K. Dey in respect of shop constructed over Plot No.73/1 & 6/2, Nazul Sheet No.19, situated near Old Law College (at present Tibet Wool Market), Juni Line, Bilaspur, which will be referred hereinafter as 'the shop in question'. The shop in question was taken on rent @ Rs.400/- per month, which gradually increased to Rs.450/- per month.
3. Initially Smt. Pushpa Dey, wife of Late A.K. Dey, has filed an application under Section 12 (2) of the Chhattisgarh Rent Control Act, 2011 (for short 'the Act of 2011') seeking eviction of the tenant/petitioner herein from the rented shop under Clause-11 of Schedule-2 of the Act of 2011.
4. Indisputably, landlady Smt. Pushpa Dey through her advocate issued notice dated 13.1.2016 (Annexure P-8) to the tenant/petitioner herein and after expiry of period prescribed in the said notice, application for eviction before the Rent Controlling Authority, Bilaspur has been filed. The tenant/petitioner submitted his reply to the application for eviction and admitted that the shop in question has been taken on rent from Late A.K. Dey (husband of original applicant) with the consent of other co-parceners of the shop in question. It has been contended that as there are other co-parceners of the shop in question, therefore, the original applicant alone is not entitled to file application for eviction before the Rent Controlling Authority. Other ground which has been raised in the reply to the application for eviction was that earlier a civil suit for eviction has been filed by the original applicant before the 7th Civil Judge Class-II, Bilaspur under the Chhattisgarh Accommodation Control Act, 1961 (old Act) on the grounds mentioned therein which was dismissed vide judgment and decree dated 28.11.2011 against which a civil appeal has been preferred before the 3rd Additional District Judge, Bilaspur and the same has also

been dismissed. Therefore, the application under Section 12 (2) of the Act of 2011 is not maintainable being hit by principle of *res judicata*.

5. The Rent Controlling Authority after considering the pleadings and evidence adduced by the respective parties, has though held that there was landlord-tenant relationship between the parties but dismissed the application for eviction vide order dated 8.1.2018 on the ground that after dismissal of earlier eviction suit and civil appeal filed by the original applicant, no appeal has been preferred before the High Court, therefore, the application under the Act of 2011 is not maintainable. Feeling aggrieved with the said order, the respondents No.1 & 2 herein have preferred an appeal before the Chhattisgarh Rent Control Tribunal, Raipur, who after hearing the parties allowed the appeal, set aside the order passed by the Rent Controlling Authority, Bilaspur and held that the landlords-respondents are entitled for vacant possession of the shop in question by holding that the principle of *res judicata* is not applicable.
6. The only ground urged by learned counsel for the tenant/appellant is that in view of the earlier round of litigation under the old Act i.e. CG Accommodation Control Act, 1961, concluded by dismissing the suit for eviction filed by respondents No.1 & 2 and the first appeal against the same has also been dismissed, subsequent application for eviction under the Act of 2011 is not maintainable. He proposed following question of law:-

“Whether the learned Chhattisgarh Rent Control Tribunal, Raipur was justified in holding that the provision of Section 12 (2), Schedule 2, clause 11 (h) of the Chhattisgarh Rent Control Act, 2011, is applicable in the present dispute?”

7. On the other hand, learned counsel appearing on behalf of respondents

No.1 & 2 has supported the impugned order passed by the appellate tribunal and submitted that a landlord can file subsequent application for eviction before the competent authority on any other ground subsequently becomes available to him. He has further submitted that under the provisions of the Act of 2011 new grounds for filing eviction application arose in their favour and the Rent Control Tribunal has rightly considered the same and passed the impugned order strictly in accordance with law.

8. We have heard learned counsel for the parties and perused the available record.
9. Before we proceed further, it would be advantageous to have a close look of the relevant provisions of Section 12 of the Act of 2011 which state about the rights and obligations of landlords and tenants.

“Section 12 - Rights and Obligations of Landlords and Tenants.- (1) Every tenant shall have rights according to Schedule 1. The Tribunal and Rent Controller(s) shall act at all times to secure to the tenant these rights.

(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.

10. Clause-11 of Schedule-2 of the Act of 2011 provides for the grounds on which a landlord can seek eviction of a tenant. Clause 11 reads thus:-

“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).”

11. The evidence and conduct of the petitioner itself shows that he made payments of agreed rent to the wife and children of Late A.K. Dey by accepting them as his landlord. Even otherwise, respondents are covered in the definition of landlord as defined under Section 2 (5) of the Act of 2011, which reads thus:-

“(5) “Landlord” means a person who for the time being is receiving or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to receive the rent, if the accommodations were let to a tenant.”

12. The original applicant is thus having the status of landlord and was competent to file an application for eviction under the Act of 2011.
13. The record would show that the landlord-tenant relationship is not in dispute. The petitioner admitted the landlord-tenant relationship between him and Late A.K. Dey (husband of original applicant & father of respondents No.1 & 2 herein). He has further admitted that after the death of A.K. Dey, he made payment of monthly rent to original applicant and even to respondents No.1 & 2 herein.
14. Landlord & tenant relationship is always based upon a contractual relationship, which is continuous. A tenant can be evicted for violating any

condition of the contract or on any other ground as provided under the Act of 2011 prevailing over the area in which the rented premises is situated. The Act of 2011 does not provide any restriction or bar on filing of fresh application for eviction after dismissal of earlier application/suit for eviction filed by the landlord before the competent authority/court.

15. It is not in dispute that original applicant had earlier filed a suit for eviction under the Chhattisgarh Accommodation Control Act, 1961 on the ground of bonafide need and non-payment of rent. However, the said suit has been dismissed due to failure of original applicant to establish her case. As the suit was filed in the year 2009 and during the pendency of said suit, new legislation with respect to the Chhattisgarh Rent Control i.e. Act of 2011, came into force and notified on 6.11.2012. Under the Act of 2011 apart from the ground of personal need, other grounds are also provided for filing an application for eviction without assigning any reason subject to issuance of six months notice coupled with a condition that rented accommodation will not be given on rent for a further period of 12 months after getting possession of the same. For the senior citizens and other landlords of special categories, the notice period is provided as '1 month'.
16. In the instant case, the original applicant was 82 years old on the date of filing of application for eviction, which is also evident from Annexure P-9, and the Act of 2011 provides her to file application by issuing one month's notice, but she had filed the said application after six months notice to the tenant/petitioner herein. Thus, there is due compliance of the provisions of the Act of 2011 for filing of an application under clause 11 (h) of Schedule-2 of the Act of 2011.
17. That apart, the Act of 2011 nowhere prohibits filing of fresh application for eviction after rejection of earlier one and repeat application for eviction

can be filed subject to making out new grounds available to the landlord or after complying with the provisions as provided under Clause 11 of the Schedule 2 of the Act of 2011. Further, as stated above, relationship of landlord & tenant is continuous contractual relation and eviction petition can be filed at any number of time even after dismissal of earlier application but only on the grounds as envisaged under Schedule-2 of the Act of 2011 subject to compliance of the provisions and prior formalities.

18. In view of above discussion, we do not find any infirmity in the order impugned passed by the Rent Control Tribunal, Raipur. The petition has no merit and substance, the same is liable to be and is hereby dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-