

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 16-01-2019

Judgment delivered on 28-03-2019

FA No. 202 of 2004

Sharad Tiwari, aged 28 years, s/o. B.L. Tiwari, (owner of STO/PCO), Advocate, resident of Sardar Bazar, Bilaspur Tahsil and Distt. Bilaspur (CG).

---- Appellant/plaintiff

Versus

1. Krishna Kumar Verma, aged about 30 years, son of late Chhotelal Verma, Manager of Krishbna Dhaba, near Antulal Petrol Pump, Tifra Bilaspur, Distt. Bilaspur (CG).
2. Raj Kumar Verma, aged about 30 years, son of late Chhotelal Verma, Manager of Krishbna Dhaba, near Antulal Petrol Pump, Tifra Bilaspur, Distt. Bilaspur (CG).

---- Respondents/defendants.

For appellants : Mr. R.K. Tiwari, Advocate.

For respondents : None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

- 1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 26-8-2004 passed by the 4th Additional District Judge, Bilaspur (CG) in Civil Suit No. 11-B of 2004 wherein the said court dismissed

the suit filed by the appellant for compensation of Rs.60,000/- against respondents/defendants.

2) The appellant/plaintiff had obtained one room on lease for Rs.500/- per month from respondent No.1. The appellant carried on the business of STD and PCO in the suit accommodation. The tenancy commences from first of each month and terminates on the last date of the month. The appellant had kept monitor, Fax machine, conference machine, phone, Battery 12 volt, sealing fan and exhaust fan, table, revolving chair, wooden partition, glass cabin, hoarding and stand board valued to Rs. 60,000/-.

3) The appellant used to open his shop at 6.00 am till 12.00 mid night. Two locks were affixed on the gate of the suit accommodation. One servant was also engaged by the appellant for the said premise. The appellant closed his shop and locked the accommodation on 19-8-2000 and on the next day morning, when he came to the shop, he found that the shutter was open and locks were broken. All the articles kept in the shop were missing. The matter was reported to Police Station Civil Lines. The appellant made enquiries from the neighbours and came to know that the respondents made forcible entry into the suit accommodation and took away articles which were kept in the suit accommodation. The appellant requested the respondents to

return his articles, but the respondents refused to return the same, therefore, he filed the suit which was dismissed.

4) As per version of the respondents, appellant vacated the suit accommodation on 18-9-2000 and took all the articles kept in the suit accommodation. As per pleading of the respondents, they did not make forcible entry and removed any article.

5. Learned counsel for the appellant would submit as under:

- i) From the evidence of Sharad Tiwari (PW/1), it is established that respondent No.1 removed articles kept in the accommodation and kept the same in Dhaba of both the respondents for which he made a complaint. Version of Sharad Tiwari (PW/1) is corroborated by version of Shrikant Shrivastava (PW/4) and Rakesh Tiwari (PW/2).
- ii) The trial Court has overlooked the entire evidence, therefore, finding of the trial Court is not liable to be sustained.
- iii) No receipt of vacation was produced by the respondents before the trial Court, therefore, version of defence witness namely Krishna

Kumar Verma (DW/1), Banmali (DW/2) and Satilal (DW/3) is not reliable, therefore, finding of the trial court is liable to be set aside.

4. I have heard learned counsel for the appellant and perused the record of the court below in which judgment and decree has been passed.

6. Sharad Tiwari (PW/1), Rakesh Tiwari (PW/2) and Rajwardhan Singh (PW/3) have been examined on behalf of the appellant whereas Krishna Kumar Verma (DW/1), Banmali (DW/2) and Satilal (DW/3) have been examined on behalf of the respondents. No one is eye-witness of removal of the articles by the respondents side. Though it is stated by the witnesses of the appellant that the articles were kept in Dhaba of the respondents, but no identification was done in the present case to establish that any article kept in the Dhaba of the respondent was the property of the appellant. No article was seized from the possession of the respondents and there was no occasion for identifying the articles by the appellants. Removal of articles can be proved by two ways, either by direct evidence or by seizure and identification of the articles removed from any place, but evidence on both counts is missing in the present case.

7. Admittedly, the appellant is tenant and the respondents are landlords. It is a case of statement against the statement as one party is saying that the appellant has not vacated the premises whereas the other party is saying that the appellant vacated has the premises. Articles were not proved to be removed from the accommodation by the respondents. Therefore, in absence of proof to the pleading of the appellant, it can be inferred that the appellant vacated the premises of his own for which respondents cannot be faulted with.

8. The trial Court has elaborately discussed the entire evidence and recorded finding that in absence of proof of removal of the articles by the respondents, decree for compensation cannot be passed. The finding of the trial Court is based on the evidence adduced by both sides. It is not case where finding is based on irrelevant or extraneous material. After re-assessing the evidence, this court has no reason to substitute contrary finding. The appeal is liable to be dismissed.

9,. Accordingly, decree is passed in favour of respondents and against the appellant as under:

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.

- (iii) Pleader's fee., if certified, be calculated
as per Schedule or as per certificate
whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju