

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 20-06-2019

Judgment delivered on 26-06-2019

FA No. 209 of 2005

- Guru Dharshan Singh Lamba s/o. Late Shri S. Jogender Singh, aged about 41 years r/o. 18 Deepak Nagar, Durg, Tahsil and District Durg (CG).

---- Appellant/plaintiff

Versus

- State Bank of India through Branch Manager, State Bank of India, Branch Malviya Nagar, Durg Tahsil and Dist. Durg (CG).

---- Respondent/defendant

For appellant : Mr. Rahil Arun Kochar, Advocate.

For respondent : Mr. Sudeep Agrawal, Advocate

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 14-3-2005 passed by the 1st Additional District Judge, Durg, District Durg (CG) in Civil Suit No. 4-B/2003 wherein the said court partially decreed the suit filed by the appellant/plaintiff to the tune of Rs.15,000/- with interest.

2) As per version of the appellant/plaintiff, he instituted a suit for recovery of Rs.1,15,000/- before the trial Court against the respondent/defendant stating that the appellant had given his house

to the respondent as per agreement dated 12-7-1999 for a period from 16-12-1997 to 15-12-2002 at monthly rent of Rs.5,000/- per month through registered agreement. Document was registered for rent on 11-10-1999. On the basis of document appellant is landlord and respondent is tenant in the suit house. As per Clause 6(f) of the agreement if the respondent wants to vacate the premise he has to give written notice at least three months in advance and there is also mention that if the respondent wishes to continue the tenancy the intimation has also to be given, but the respondent did not comply the condition as enumerated in the contract and kept in his possession till December, 2002. The respondent kept the premise in possession till December 2002 and without intimation he left the premise in the month of December, 2002 and started banking business from other place. Some items of the respondent are still lying in the house of the appellant but the respondent never made any effort to shift the materials lying in the house of the appellant to other place. On 27-2-2003 appellant sent legal notice to respondent for recovery of the rent amounting to Rs.15,000/- but neither the respondent gave clear reply to notice nor paid the arrears of rent of the disputed house. Hence, the appellant filed the suit for recovery of rent.

3) Respondent denied all the allegations and pleaded that house was vacated in the month of January 2001 and for that news

was published in various local newspapers that the bank was shifted to one Nahar building on 10-1-2001 and rent was paid upto 31-1-2001 and it was within the knowledge of the appellant.

4) Learned counsel for the appellant would submit as under:

- i) Respondent violated the Clause 6(f) of the agreement and did not give notice in writing three months in advance, but the trial court instead of allowing the full claim only awarded three months rent for not giving notice which is not sustainable.
- ii) The material i.e., old furniture which has been stored in the appellant's suit house itself proves that the respondent was in possession of the suit house at the time of filing of the suit.
- iii) The trial court opined that the suit house was vacated in presence of younger brother of the appellant, but younger brother has no role in agreement that has been executed between the parties.
- iv) The decree passed by the trial court is erroneous and same is liable to be set aside.

5) On the other hand, learned counsel for the respondent would submit that the finding of the trial court is based on proper marshaling of the evidence and tenanted premise was vacated on 10-1-2001 and the bank was shifted to Nahar Building on the said date which was published in various local newspapers, therefore,

finding of the trial Court is proper. He would further submit that all the municipal bills and electricity bills were cleared by the bank upto January 2001 and brother of landlord namely Hakam Singh was present when premise was vacated by the bank. The trial court awarded the amount equivalent to three months rent because the trial court found that notice in written format was not given as per rent note, therefore, finding of the trial Court is not liable to be interfered while invoking jurisdiction of the appeal.

6) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

7) Appellant/plaintiff adduced evidence of himself as PW/1 and produced documents Ex.>P/1 to P/5. Respondent side adduced evidence of P.C.B Goutam (DW/1) who was Branch Manager of State Bank of India. From the evidence of the appellant, it is clear that the Bank has deposited the rent upto January 2001. As per version of the appellant, respondent/Bank vacated the premises in the month of January 2002 but as per version of DW/1 P.C.B. Goutam, Bank was shifted to Nahar Building situated at Malviya Nagar on 10-1-2001. Vacation of the premise was published in daily newspapers namely Deshbandhu, Nav Bharat and Amrit Sandesh on 10-1-2001. Brother of the

appellant namely Hakam Singh was also present at the time of vacation of the premise in question.

8) Now the point for determination of this court is whether premise in question was vacated on 10-1-2001 or in the month of December, 2002. The appellant has not deposed before the trial Court as to who paid the electric bills and other dues after January 2001. The appellant did not say about payment of electric bills from the month of February 2001 onwards. If bank would have occupied the possession in the month of February 2001 onwards it would have paid the electric bills but the bank has not paid the electric bills and no claim was filed by the appellant regarding payment of electric bills which shows that premise in question was vacated in the month of January 2001.

9) As per version of Bank Officer, brother of the appellant namely Hakam Singh has also assisted during vacation of the premise. The appellant did not adduce evidence of Hakim Singh to rebut the pleading of the respondent that Hakam Singh was not present at the time of vacation of the premise, therefore, after evaluating the oral and documentary evidence, the trial Court recorded finding that house in question was vacated in the month of January 2001.

10) The trial court awarded amount of Rs.15,000/- equivalent to three months rent because it is not proved that written

notice was served to appellant for vacation of the premise. Finding of the trial court is based on proper marshalling of the evidence and this court has no reason to substitute contrary finding. Argument advanced on behalf of the appellant is not sustainable.

11) As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondent 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