

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 324 of 2006**

Netram Bagh (चाय वाला) Aged -52 years, S/o Late
Deenbandhu Bagh, Presently R/o Uchala Talab,
Ramkund, Utkal Basti, Raipur

---- Appellant/Defendant

Versus

Subhashchandra Gandhi, 53 Yr. S/o Jaichand Gandhi,
R/o Gond Para, Near Kitabghar, Bilaspur

---- Respondent/plaintiff

For Appellant : Mr. Raja Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/12/2019

(1) The substantial question of law involved, formulated and to be answered in this defendant's second appeal states as under:

“Whether the findings recorded by both the Courts below regarding bonafide need of respondent is perverse ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court).

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) Respondent / plaintiff herein filed a suit for eviction and ejectment stating inter alia that the defendant is his monthly tenant of Rs. 300/-, which he has terminated by serving notice on 4.8.2001 and despite that defendant has not vacated the suit accommodation, which the plaintiff is required bonafidely for opening the office of astrology and he has no other reasonably suitable accommodation in the township of Raipur, in which, the defendant remained *ex parte* and did not appear before the trial Court.

(2.2.) The plaintiff examined himself and produced certain documents in support of his case, which the trial Court has accepted and granted decree of eviction in his favour, which was challenged by the defendant/tenant in the first appeal filed before the first appellate Court. The first appellate Court, after re-appreciation of oral and documentary evidence available on record, affirmed the judgment & decree of the trial Court by dismissing the appeal, against which, this second appeal has been preferred by the appellant/defendant, in which, the substantial question of law has been formulated for consideration and set out in the opening paragraph of the judgment.

(3) Learned counsel appearing for the defendant/tenant would submit that the plaintiff has not stated about his

bonafide need for the suit accommodation and only on plaintiff's wish to get the accommodation vacated, no decree for eviction can be granted, as such, the finding recorded by both the courts below with regard to *bonafide* need is liable to be set aside.

(4) I have heard learned counsel appearing for the appellant/defendant and considered his submissions and went through the record with utmost circumspection.

(5) The plaintiff has stated in his statement recorded before the trial Court that he has no other reasonably suitable accommodation in the township of Raipur, which he has also averred on oath before making statement before the court but he was not cross cross-examined as defendant was *ex parte* before the trial Court, as such, there is un-controverted statement available on record and by which the trial Court has recorded a finding that the plaintiff needs the accommodation for his bonafide need for opening the astrology office and he has no other reasonably suitable accommodation for the said purpose, which has been affirmed by the first appellate Court.

(6) The plaintiff in his statement before the trial Court has clearly stated that he needs the suit accommodation for opening astrology office and he has no other reasonably suitable accommodation in the township

of Raipur, which is situated in the main Road, Ramsagarpara and he is owner thereof and he is involved in the work of astrology for a period of 25 years. Thus, the plaintiff/landlord has already averred the facts constituting the ground under Section 12(1)(f) of the Act, 1961. Merely not stating that need is bonafide, plaintiff's need even otherwise, which is bonafide, cannot be said that it is not bonafide need. So far as next submission of counsel for the appellant that it is a mere wish and it is not the actual need also deserves to be rejected. Defendant, despite notice by the trial court, did not appear and did not controvert the statement of the plaintiff made before the trial Court and, therefore, need is found to be established. Thus, in the second appellate stage, defendant cannot say that the plaintiff's need is mere wish and not an actual need.

(7) Both the courts below have concurrently held the need to be the bonafide need and the plaintiff has no other reasonably suitable accommodation in the township of Raipur, and even otherwise bonafide need is a finding of fact based on material available on record and I do not find any illegality or perversity in the findings recorded by both the courts below. Thus, the substantial question of law is answered accordingly in favour of

plaintiff and against the defendant.

(8) Consequently, second appeal, being devoid of merit, is liable to be and is hereby dismissed. No cost(s).

(9) A decree be drawn accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

