

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 6-2-2019

Judgment delivered on 8-03-2019

FA No. 79 of 2004

1. Ajay Budhiya, aged about 40 years, s/o late Shri Shyamsunder Budhiya Partner M/s. Budhiya Auto through M/s. Budhiya Petrol Pump, Main road, Korba (CG).
2. Vijay Kumar Budhiya aged about 37 years, s/o. Late Shri Shyamsunder Budhiya Partner,. M/s Budhiya Auto Hero Hond Show Room Plot N. 57, Power House Road, T.P. Nagar, Korba (CG). C/o. Hero Honda Service Centre, Tender Care School Ke Samne, Plot No. 391 Vijya Talkies road, TP Nagar Korba (CG).
3. Smt. Kavkita Budhiya aged about 37 years, w/o. Shri Vijay Budhiya, Partner M/s Budhiya Auto Budhiya Petrol Pump Ke Pichhe, Main Road, Korba (CG).
4. Smt. Sayogita Budhiya aged about 37 years, w/o. Shri Ajay Budhiya, Partner M/s. Budhiya Auto, Budhiya Petrol Pump Ke Picche, Main road Korba (CG).

--Appellants

Versus

Dr. Smt. Gulshan w/o.late Dr.Anand Kumar Agrawal,aged 51 years, d/o. Shri Ramsharan as Malhotra, through Sagar Nursing Home Korba (CG).

– Respondents

For appellants : Mr. Awadh Tripathi, Advocate.

For respondents : Mr. Ashish Shrivastava and Mr. Anurag Verma, Advocates.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred against the judgment/decreed dated 12-2-2004/24-2-2004 passed by the 3rd Additional District Judg (FTC), Korba (CG) in Civil Suit No. 12-A/2002 whereby the said court decreed the suit for compensation to the tune of Rs.4,30,000/- and arrears of rent to the tune of Rs.8000/- filed by the respondent/plaintiff.

2. Appellants/defendants were tenants of the respondent/plaintiff and due to some dispute regarding rent, the appellants/defendants filed an application before the Rent Controlling Authority (for short, "the Authority") under Section 10 of the Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 (for short, "the Act, 1961") for fixing the standard rent of the rented premises situated at plot No. 57 at Korba which is shown in the map attached with the plaint. The said application was dismissed by the authority with the observation that the parties can fix the standard rent according to the agreement and consent. Latter on, the said authority passed order of eviction of the appellants vide order dated 7-8-2002. The appellants filed revision against the order of authority which was registered as civil revision No. 583 of 2002 before the High Court which was dismissed by allowing two months' time to vacate the suit premises. The appellants vacated the suit premises on 7-6-2003. The respondent/plaintiff filed a suit for eviction and compensation

@ Rs1000/- per day. The trial Court awarded damages without proof contrary to evidence available on record that is why this appeal is filed.

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

- I) No damages were claimed before the Rent Controlling Authority and before this Court for compensation and the appellants vacated the suit premises according to the direction of this court, therefore, respondent has no right to get compensation.
- ii) The respondent terminated the tenancy vide notice dated 1-2-2002 (Ex.P/1) on 31-3-2002 on the ground that she has to start Nursing Home but she did not start any Nursing Home till filing of this appeal by the appellants i.e., 23-3-2004 that itself indicates that compensation on the ground of opening Nursing Home is not proved.
- lii) As compensation was not claimed before

the Rent Controlling Authority and before the High Court, same is barred by principle of *res judicata* (to file suit for compensation).

- iv) The rent agreement does not speak about compensation, therefore, finding of the trial Court is beyond scope of contract between the parties.

4. On the other hand, learned counsel for the respondent would submit as under.

- i) Mesne profits can be awarded from the date of filing of the suit at the rate higher than the contractual rate and court can consider escalation in rental prices.
- ii) The trial Court assessed compensation on the basis of evidence, therefore, same is not liable to be interfered with while invoking jurisdiction of the appeal.

Reliance has been placed on the decisions of Hon'ble the Supreme Court and High Court of Madhya Pradesh in the matters of **Shyam Charan vs. Sheoji Bhai and another, reported in (1977) 4**

SCC 393, Vinod Kumar Khanna and others vs. Bakshi Sachdev (deceased) through Lrs and others, AIR 1996 Del 32, Prema Agrawal and others vs. Om Prakash Gautam and another, 2001 (1) MPLJ and Gopalakrishna Pillai and others vs. Meenakshi Ayal and others, AIR 1967 SC 155.

5. I have heard learned counsel for the parties and perused the records of both the courts below including the judgment and decree.

6. The first question for consideration of this court is upto what date the appellants were tenants of the respondent.

7. This court will first consider the definition of tenant which is defined in Section 2 (i) of the Act, 1961 which may be read as under:

“2 (i) *“tenant”* means a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express or implied, would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also, any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom

any order or decree for eviction has been made”.

8. In the present case, order of eviction was passed on 2-8-2002 by the Rent Controlling Authority and revision was filed against the said order and proceeding of revision is continuation of eviction proceeding and revision was decided by this court on 13-3-2003 and two months' time was granted for vacating the said premises, therefore, upto 13-5-2003 the appellants were tenants as per definition as incorporated in the said Act. Though it is argued on behalf of the respondent that possession of the appellants was illegal from 1-4-2002 as the tenancy is terminated by notice, but same is not sustainable in view of definition of tenant as mentioned above.

9. From the record it is clear that possession was handed over to the respondent of the said premise on 7-6-2003. From the order sheet of this court dated 18-6-2004 the balance amount of rent as claimed of Rs.8000/- was ordered to be paid and it appears from the record that same is tendered/paid to the respondent, therefore, no rent amount is balance towards appellants upto 7-6-2003.

10. The next question for consideration of this court is whether respondent is entitled for compensation @ Rs.1000/- per day from 1-4-2002 to 7-6-2003. Respondent/plaintiff side adduced

evidence of Dr. Smt. Gulshan (PW/1), Sonu Jain (PW/2) and Dr. P.S. Gurugoswami (PW/3) and as per their version rate of rent is increased that is why she is entitled for compensation @ Rs.1000/- per day. For increasing rent there is provision under Section 9 of the Act, 1961 which may be read as under:

“9. Notice of increase of rent. - (1)

Where a landlord wishes to increase the rent of any accommodation, he shall give the tenant notice of his intention to make the increase and in so far as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given.

(2) Every notice under sub-section (1) must be in writing signed by or on behalf of the landlord and either be sent by registered post acknowledgement due to the tenant or be tendered or delivered personally to him, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the accommodation.

11. In the present case no notice was served to the appellants to make increase in rent and from the evidence, it is not clear as to what was the percentage of increase in rent in the area in question.

In the present case, total area of occupation of the premise of the appellants is from 1-10-1995 to 7-6-2003 which comes to about seven years and eight months and during this period the respondent has already increased rent about 40%. From the notice Ex.P/1 itself, it is clear that earlier rent was Rs.4,360/- per month and it was later on increased to Rs.6,440/- per month. When rent is already increased upto 40% the respondent/plaintiff had to establish before the trial Court as to how much rent is increased in the area and whether it is more than 40% as already increased by the respondent. The appellants required to pay the rent as agreed between the parties. In the present case, there is no evidence that rent is increased five times between April 2002 to 2003. The trial Court awarded five times of the rent already fixed between the parties which is Rs.1000/- per day or Rs.30,000/- per month. No one from respondent side deposed before the trial Court that rent is increased five times within one year. Therefore, argument advanced on behalf of the respondent that rental price is increased and compensation should be awarded five times is not sustainable. Case laws cited on behalf of the respondent regarding escalation and rent price do not help to the respondent because same is clearly distinguishable from the facts of the present case.

12. In the present case rent was already increased 40% and there is no evidence of escalation of rent price five times in a year. Compensation can be awarded only when a civil wrong is committed by the appellants/tenants. As per definition of tenant, appellants were legal tenants upto 13-5-2003, therefore, no civil wrong was committed by them. They have vacated the house and paid full rent upto 7-6-2003, therefore, they are not required to pay compensation as awarded by the trial Court. Finding of the trial court is not liable to be sustained and same is hereby set aside. The appeal deserves to be allowed.

13. Accordingly, the decree is passed in favour of the appellants and against the respondent as under:

- i) The suit filed by the respondent for compensation is dismissed with cost.
- ii) Parties to bear their own costs.
- lii) Pleaders' fee, if certified, be calculated as per schedule or as per certificate which ever is less.
- iv) A decree be drawn up accordingly

Sd/-

(Ram Prasanna Sharma)

Judge

Raju

