

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 172 of 2005**

Brij Mohan Dua, S/o Sita Ram Dua, Aged about 56 years, R/o Gondpara
Bilaspur, Tahsil & District Bilaspur (C.G.)

---- Appellant**Versus**

1. Balwant Singh, S/o Priteenam Singh (Dead) through LR's.
 - 1.a. Smt. Jagjit Kaur, Widow of Late Balwant Singh, Aged about 50 Years.
 - 1.b. Shri Paramjit Singh, Aged about 30 Years, S/o Late Balwant Singh.
 - 1.c. Ravinder Pal Singh, Aged about 27 Years, S/o Late Balwant Singh
- All are resident of Raipur Road, carrying the business of Hindustan Motors, Bilaspur, Tahsil & District Bilaspur (C.G.)

---- Respondents

For Appellant	: Shri Ram Kumar Tiwari, Advocate.
For Respondents	: None.

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

05/08/2019

1. This First Appeal is preferred against the judgment/decreed dated 28th March, 2005 passed by 10th Additional District Judge (FTC), Bilaspur (C.G.) in Civil Suit No. 16-A/2004 wherein the said Court dismissed the suit filed by the appellant/plaintiff for eviction of the respondent from suit premise which is situated at Link Road, Bilaspur (C.G.) as per map attached with the plaint and for arrears of rent to the tune of Rs. 39,600/-.
2. As per averment of appellant, the premise in question was taken by the respondent on rent from father of the appellant/plaintiff and assured him that he will vacate the house on demand. The respondent did not pay rent regularly that is why a notice was

issued to him for payment of arrears of rent on 3rd September, 1990 as per Ex.P/2, but rent was not paid despite the notice. The appellant has no reasonably suitable non-residential accommodation for opening a shop for business, therefore, he filed the suit before the trial Court, but the trial Court dismissed the suit contrary to factual matrix and legal aspect of the matter.

3. Learned counsel for the appellant submits as under:-

- (i) The tenancy is admitted by the respondent though, it is stated on behalf of the respondent that he is tenant of Sita Ram who was father of the appellant, but during pendency of this appeal, father of the appellant died on 25th September, 2009.
- (ii) As per reply to application filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 which is submitted before this Court on 14th August, 2012, after passing of his father, the appellant is landlord by operation of law and tenancy is admitted, therefore, finding of the trial Court is not liable to be sustained.
- (iii) The arrears of rent was not deposited even after issuance of notice, therefore, respondent is liable to be evicted under Section 12 (1)(a) of the Chhattisgarh Accommodation Control Act, 1961 (For short 'the Act, 1961').
- (iv) From evidence of the appellant side, it is clearly established that premise in question is required bonafidely for opening a shop by the appellant and trial Court recorded finding in favour of appellant that premise in question is required bona-fide and there is no other suitable accommodation in the locality in possession of the

appellant, therefore, decree ought to have been granted by the trial Court.

- (v) Though there is a dispute regarding amount of monthly rent, but the fact remains that the respondent has not paid the agreed rent regularly, therefore, finding of the trial Court is liable to be set aside.
- 4. First question for consideration before this Court is whether the appellant is landlord of the premise in question and respondent is tenant. In written statement filed on behalf of the respondent, it is admitted that respondent is tenant of the premise in question. Though it is pleaded that he is tenant of Sita Ram who was father of appellant, but father of appellant died as mentioned above. The appellant is landlord of premise in question by operation of law, therefore, it is held that respondent is tenant and appellant is landlord of premise in question.
- 5. Second question for consideration before this Court is whether the respondent has paid or tendered to pay arrears of rent legally recoverable from him within two months of date in which notice of payment the notice is served on him. From evidence of the appellant side and as per notice Ex.P/2, it is established that a notice was served to him on 3rd September, 1990, but he did not pay arrears of rent. Though, it is in dispute between the parties whether monthly rent was Rs. 825/- per month or Rs. 125/- per month, but the fact remains that the agreed rent which is Rs. 125/- per month is also not paid after service of notice.
- 6. The respondent filed a receipt dated 13th November, 1992 (Ex.D/2). As per Ex. D/2 rent was deposited to the tune of Rs. 250/-

after more than two years of the notice. From this receipt, it is clear that the entire arrears was not paid by the respondent. From evidence of both sides, it is clearly established that the respondent has not paid arrears of rent within two months from the date of which a notice of demand from the arrears of rent was served on him, therefore, respondent is liable to be evicted under Section 12 (1)(a) of Act, 1961.

7. From evidence of the appellant side, it is established before the trial Court that the premise in question is required bonafidely for the purpose of starting business of appellant and he has no other reasonably suitable non-residential accommodation of his own on his occupation in the city. No evidence was led in rebuttal that the premise in question is required bonafidely, therefore, evidence of appellant is un-rebutted and the trial Court has also recorded finding that the premise in question is required to the appellant. In view of evidence led by both sides, the respondent is liable to be evicted on the ground of provisions of Section 12 (1)(f) the Act, 1961.
8. In view of the above discussion, the finding arrived at by the trial Court is not liable to be sustained and same is hereby set aside. Accordingly, the appeal is allowed and decree is passed in favour of appellant/plaintiff and against the respondent/tenant on the following terms and conditions:-
 - (i) The appeal is allowed.
 - (ii) The respondent shall vacate the premise in question within two months and handover the

same to the appellant. The respondent is also liable to deposit the entire rent due against him.

- (iii) Parties to bear their own costs.
- (iv) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (v) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge