

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 429 of 2004**

Govind Lal Agrawal, son of Shri Sitaram Agarwal, aged about 57 years,
C/o Govindlal Durga Prasad Kirana Stores, Gol Bazar, Dongergarh,
District Rajnandgaon (C.G.)

---- Appellant/Defendant

Versus

Abdul Gafur, son of Shri Haji Sarfuddin, aged about 82 years, resident of
Ward No. 7, Kalkapara, Dongergarh, District Rajnandgaon (C.G.)

---- Respondent/Plaintiff

For Appellant/defendant	: Mr. Harshal Chouhan, Advocate.
For Respondent	: Mr. Saket Pandey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****06/08/2019**

(1) The substantial question of law involved, formulated and to be answered in the second appeal filed by the defendant state as under:

“Whether the learned lower appellate Court was justified in law in granting decree of eviction on the ground of stated bonafide need for starting business of plaintiff's son in the absence of pleading and proof that the alternative accommodation was not suitable ?

(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 plaintiff - landlord filed a suit for eviction and arrears of rent against the defendant – tenant stating inter alia that suit accommodation situated at Ward No. 16, Gole Bazar, Dongargarh, area 840 sq.ft. consisted of two rooms, one room (suit

accommodation) was let out to the defendant/tenant by his younger brother Abdul Qadar for non-residential purpose, but on bonafide requirement of suit accommodation for non residential purpose, plaintiff served legal notice on 28.09.1997 to the defendant, which was replied by the defendant, but failed to vacate the suit accommodation leading to filing of the suit for eviction on the ground of Section 12(1)(f) of the M.P./C.G. Accommodation Control Act, 1961 (henceforth Act, 1961”) stating *inter alia* that suit accommodation is required for the *bonafide* need of his son for starting/continuing the cycle shop as he is running cycle shop at tenanted premises in the name of Bharat cycle in Gol Bazar, Jai Stambh Chowk on a monthly rent of Rs. 500/- and he has no other reasonably alternative suitable accommodation of his own at the township of Dongargarh, which the defendant denied stating *inter alia* the suit accommodation is not required bonafidely for the need of plaintiff's son as he has other reasonably suitable accommodation in his possession at Kalkapara, Dongargarh, therefore, the suit deserves to be dismissed.

(3) The trial Court, after appreciating the oral and documentary evidence available on record, dismissed the suit holding that relationship of landlord and tenant is not established between the plaintiff and defendant and even the plaintiff has failed to prove that suit accommodation is required bonafidely for starting cycle shop of his son.

(4) The plaintiff preferred first appeal there-against. The first appellate Court, after re-appreciating the oral and documentary evidence available on record, decreed the suit holding that plaintiff is in *bonafide* need of suit accommodation for staring business of his son as he has no other alternative reasonably suitable accommodation in his possession in the township of Dongargarh, against which this second appeal has been preferred by the defendant in which substantial question of law has been formulated and set out in the opening paragraph of the judgment.

(5) Mr. Harshal Chouhan, learned counsel appearing for the appellant/plaintiff would submit that the first appellate Court is absolutely unjustified in granting decree in favour of the plaintiff ignoring the fact that plaintiff has other alternative reasonably suitable accommodation in his possession at Kalkapara, Ward No. 7, Dongargarh, which satisfies the need of the plaintiff son and, therefore, no decree could have been passed in favour of the plaintiff by the first appellate Court, which deserved to be set aside.

(6) Per contra, Mr. Saket Pandey, counsel for respondent would support the impugned judgment and decree and submit that the first appellate Court is absolutely justified in granting decree in favour of the plaintiff, which does not call for any interference in the instant second appeal and it deserves to be dismissed with cost(s).

(7) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(8) The suit accommodation consists of two rooms, which is located at plot No. 1392/1 of which, the plaintiff is owner and landlord and it has been found established by the first appellate Court.

(9) The need of plaintiff's son for starting business i.e. for running bicycle shop is also found established as admittedly, the plaintiff's son is running shop on tenanted premises at Jaistambh Chowk, Gole Bazar, Dongargarh on a monthly rent of Rs. 500/-. The total area of suit accommodation is 840 sq. ft., in half of the portion as apparent from the plaint map, the plaintiff is in possession, which is being used for the godown of the plaintiff and his son and other part is suit accommodation, which is sought to be vacated on the ground that the plaintiff's son is running the cycle shop on a tenanted premises and if the cycle shop is located in one place, it will be easier to run cycle shop, which the first appellate Court has accepted and granted decree in favour of the plaintiff.

(10) The defendant has pleaded that at Kalkapara, Dongargarh, some alternative accommodation is available to the plaintiff, which can be reasonably suitable accommodation for the plaintiff's need, which the first appellate Court has not accepted and rejected that accommodation as not reasonably suitable accommodation for the need of plaintiff's son.

(11) It is well settled law that it is for the plaintiff to choose, which is the best suitable accommodation for his business and tenant cannot dictate to the landlord that which is best and suitable accommodation for his business purpose. In the instant case, admittedly, other part of suit accommodation is being used by the plaintiff and his son for the godown purpose i.e. for keeping spare part of cycle and he is running cycle shop at the tenanted premises so if the suit accommodation is vacated and the cycle shop is shifted therein, definitely the plaintiff will be able to use suit accommodation alongwith his go down more effectively and would enhance his business prospect, which the first appellate Court has accepted and rejected the plea that plaintiff has no other reasonably suitable alternative accommodation at the township of Dongargarh.

(12) In the matter of **Ram Prasad Rajak v. Nand Kumar and brother. and another**¹, their Lordships of the Supreme Court have held that bonafide requirement of landlord does not give rise to substantial question of law, which is entirely matter to be decided on appreciation of evidence.

(13) In the instant case on appreciation of evidence available on record, the first appellate court has clearly held that plaintiff's bonafide need for starting business of his son is well established and he has no other reasonably suitable alternative accommodation is a finding of fact based on material available on record and I do not find it either perverse or contrary to the record. The substantial question of law is answered

1 AIR 1998 SC 2730

accordingly in favour of plaintiff and against the defendant.

(14) The second appeal, being devoid of merit, is liable to be and is hereby dismissed.

No cost(s).

(15) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

