

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 12-4-2019

Judgment delivered on 26-04-2019

FA No. 3 of 2003

- B.T. Agashe aged about 50 years s/o. Shri T.B. Agashe, Principal, Agashe Central Industrial Training Centre, Ashwani Nagar, Mahadeo Ghat Road, Raipur (CG).

---- Appellant/plaintiff

Versus

- Smt. Asha Devi Sharma, aged 40 years, w/o. Devidayal Sharma, resident of Budhapara, Near Primary School, Raipur (CG).

---- Respondent/defendant

For appellant : Mr. Kishore Bhaduri and Ms. Juhi Jaiswal, Advocates

For respondent : Mr. Manish Thakur and Mr. Ashish Kumar Valecha, Advocates.

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 10-10-2002 passed by 4th Additional District Judge, Raipur (CG) in Civil Suit No.60-B/2001 wherein the said court dismissed the suit filed by the appellant/plaintiff for recovery of the amount to the tune of Rs.51,320/-

2) As per the appellant/plaintiff, he entered into agreement of tenancy with the respondent/defendant whereby he has been

offered to obtain accommodation at village Changorabhata, Raipur under the name and style of "Mohini Palace". The said accommodation was consisting of Hall and rooms at monthly rent of Rs.8,000/- to which the respondent agreed and the agreement was drawn up. Pursuant to the terms, the appellant made an advance of Rs.25,000/- on 29-10-1998. Since the accommodation required some repairs, therefore, possession of the accommodation was delivered on 1-4-1999. Since the repairs needed in the accommodation required expenses, appellant was asked to pay further sum of Rs.25,000/- which was also paid by the appellant to the respondent through her husband. The appellant wished to open an industrial training institute in the said accommodation and had applied for proper sanction from the concerned authorities. On inspection of the spot by a team from Central Labour and Employment Department, permission was negated on the ground of non-suitability of the accommodation. The appellant delivered back the possession of the accommodation to the respondent on 26-7-1999 and by notice asked for the refund of the deposit of Rs.50,000/- along with interest. On non-reply he filed a suit before the trial Court which was dismissed.

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

- i) The trial court failed to appreciate the fact

that Ex.P/2 and P/3 proved the fact of deposit of Rs.50,000/- and the view taken by the trial Court is contrary to the factual matrix of the case.

- ii) The trial Court ought to have taken the inference that bifurcation of rent in the name of two persons would not create any hurdle for recovery of the amount advanced by the appellant.
 - iii) The trial court ought to have drawn adverse inference against the respondent because she did not adduce any evidence in support of her contention.
 - iv) The trial Court has not evaluated the oral and documentary evidence adduced by the appellant, therefore, finding of the trial court is liable to be set aside.
- 4) On the other hand, learned counsel for the State would submit that the finding of the trial court is based on proper marshalling of the evidence which does not call for any interference by this court while invoking jurisdiction of the appeal.
- 5) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6) The case of the appellant is based on the document (Ex.P/1). This document is relied on by the appellant, therefore, same is binding on him. As per Ex.P/1, appellant became tenant from 1-1-1999 at the rate of Rs.8000/- per month. The appellant deposed before the trial Court that he took the accommodation on 1-4-1999 but oral evidence is not permissible when term of the agreement is reduced in writing as per Sections 91 and 92 of the Indian Evidence Act, 1872, therefore, from the document (Ex.P/1) it is proved before the trial court that the appellant entered into agreement and tenancy started from 1-1-1999. As per version of the appellant, he gave notice to the respondent for vacating the premise on 26-7-1999. As per Section 106 of the Transfer of Property Act, 1882 (for short, "the Act, 1882") lease shall be deemed to be made from month to month. Section 106 of the The Transfer of Property Act, 1882 may be read as under:

"106. Duration of certain leases in absence of written contract or local usage.—

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month,

terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

7) When notice was given by the appellant to respondent on 26-7-1999 tenancy was terminated on 31-8-1999 because 15 days shall be counted from 26-7-1999 and therefore, it is held that tenancy in the present case is terminated on 31-8-1999. The premise of the respondent was taken on rent from 1-1-1999 and as per record, no rent was paid from 1-1-1999 to 31-3-1999 which comes to Rs.24,000/-. Again, after taking two accommodations from the respondent and her husband from 1-4-1999 monthly rent was Rs.16,000/- and it was paid for only three months i.e., April, May and June, to the tune of Rs.48,000/-. In this way, rent of July and August amounting to Rs.32,000/- and rent of January to March payable to present respondent amounting to Rs.24,000/- was balance against the respondent which comes out to Rs.56,000/-.

8. From the evidence, it is established that advance amount was paid twice; first on 29-10-1998 to the tune of Rs.25,000/- and second on 1-4-1999 to the tune of Rs.25,000/-, in all Rs.50,000/-. The appellant claimed for the advanced amount of Rs.50,000/- but

from the record, it is clear that rent was outstanding to the tune of Rs.56,000/-, therefore, the trial Court opined that no amount is recoverable from the respondent. Finding of the trial court is based on factual matrix and legal aspect of the matter which is not liable to be interfered with while invoking jurisdiction of the appeal. The appeal is liable to be dismissed as argument advanced on behalf of the appellant is not sustainable.

9) 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