

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 104 of 2008**

Maniklal Sahu, S/o Shivratan Sahu, Aged about 45 years, R/o Chhattisgarh Nagar Nagar, Ring Road No. -1, Tikrapara, District Raipur (C.G.)

----- Appellant/Defendant

Versus

Smt. Laxmi Pal, W/o Dr. H.L. Pal, Aged about 50 years, R/o Jalgrih Tikrapara, Raipur, Tehsil & District Raipur (C.G.)

----- Respondent/Plaintiff

For Appellant : Mr. A.P. Sharma & Mr. K.K. Dewangan, Advocate

For Respondent : Mr. Anurag Singh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgement On Board

25/09/2019

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

“Whether both the Courts below have erred in ignoring the variance between the pleading and proof relating to the ground of eviction and in granting a decree for eviction against the appellant/defendant under Section 12(1)(f) of the C.G. Accommodation

Control Act ?

(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) The plaintiff filed a suit for eviction on the ground enumerated under Section 12(1)(a) & 12(1)(f) of the M.P./C.G. Accommodation Control Act, 1961 (henceforth "Act, 1961") pleading *inter alia* that she is the landlady and owner of the suit accommodation (Shop No. 1, situated at Pal Complex, Jalgrih Marg, Tikrapara, Raipur) and shop No. 1 admeasuring area 120 sq. ft was let out to the defendant on a monthly rent of Rs. 350/- on 20.11.1991 for non-residential purpose of starting cycle repairing shop. It has further been pleaded that defendant had not paid rent from 1.7.1998 to 31.10.1998, therefore, he is liable to be evicted under Section 12(1)(a) of the Act of 1961. It was also pleaded that suit accommodation is required *bonafidely* for starting clinic of her major daughter and she has no other reasonably suitable accommodation of her own in the township of Raipur and, therefore, he is liable to be evicted under Section 12 (1)(f) of the Act of 1961.

(2.2) The defendant, by filing written statement before the trial Court, admitted the relationship of landlord and tenant between the parties; but further pleaded that entire rent has been paid to the plaintiff and the suit accommodation is not required bonafidely by the plaintiff for opening the clinic of her major daughter as she has no other reasonably suitable accommodation in her possession in the township of Raipur and, therefore, suit filed by the plaintiff is liable to be dismissed.

(3) The trial Court, by its judgment & decree dated 15.07.2007, granted decree only under Section 12(1)(f) of the Act, 1961, which the first appellate Court, by its impugned judgment & decree dated 31.01.2007 affirmed in appeal filed by the defendant 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 and set out in the opening paragraph of the judgment.

(4) Shri A.P. Sharma, learned counsel appearing for the appellant/defendant would submit that both the courts below are absolutely unjustified in granting decree in favour of the plaintiff under Section 12(1)(f) of the

Act, 1961 by ignoring the fact that plaintiff has other alternative suitable accommodation of her own in the township of Raipur as Shop No. 8 of the same complex is already in her possession and, therefore, it cannot be held that she has no other reasonably suitable accommodation of her own in the township of Raipur, as such, decree granted by both the courts below under Section 12(1)(f) of the Act deserves to be set aside.

(5) Mr. Anurag Singh, learned counsel for the respondent/plaintiff would submit that finding recorded by both the courts below that suit accommodation is required bonafidely for starting clinic for her major daughter; and further finding that plaintiff has no other reasonably alternative suitable accommodation of her own in the township of Raipur is a finding of fact based on material available on record, which does not call for any interference under Section 100 of the Code of Civil Procedure.

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

(7) It is not in dispute that suit accommodation was let out by the plaintiff to the defendant on a monthly

tenancy of Rs. 350/- with effect from 20.11.1991 for non- residential purpose in which the defendant is continuing his cycle repairing shop. It is also not in dispute that the plaintiff is landlady and owner of the suit accommodation whereas defendant is tenant. Now, the dispute is only with regard to second limb i.e. decree has been granted in plaintiff's favour under Section 12(1)(f) of the Act, 1961. It is case of defendant that the plaintiff is in possession of Shop No. 8, situated in the same complex, which is reasonably suitable for the alleged bonafide need of the plaintiff and, therefore, the decree granted in favour of plaintiff under Section 12(1)(f) of the Act, 1961 is bad in law.

(8) The plaintiff, in paragraph 7 of his plaint, filed before the trial Court, has clearly stated that she has no other reasonably suitable alternative accommodation in her possession in the township of Raipur for her bonafide need i.e. for starting clinic for her unmarried daughter, which the defendant has replied, in paragraph 5 of his written statement, stating that plaintiff has other reasonably suitable alternative accommodation of her own in the township of Raipur i.e. shop No. 8 in the same complex. The defendant/tenant has not specified that the alleged alternative accommodation available with the plaintiff is suitable for her *bonafide* need.

Even area of the alleged accommodation, which is suitable for the plaintiff for her bonafide need is also not indicated in the written statement, whereas, the defendant was required to plead and establish specifically that she has other reasonably suitable alternative accommodation of her own in the township of Raipur for her *bonafide* need. The defendant/tenant (PW-1), in paragraph 8 of his written statement, before the Court has stated that Shop No. 8, situated at the same complex is vacant and the same is in possession of the plaintiff/landlady. The plaintiff, in paragraph 3 of the plaint, has clearly indicated that shop No. 1, which is let out to the defendant, is 120 square meter and it is suitable for opening the clinic of her major unmarried daughter, therefore, the defendant was required to plead and establish that vacant alternative accommodation in the township of Raipur is in possession of the plaintiff and suitable for her *bonafide* need.

(9) Even otherwise, the Supreme Court in the matter of **Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta**¹ has held as under :-

“14. The availability of an alternate accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is

1 (1999) 6 SCC 222

sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to bonafides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the Court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of Clause (e) of Sub-section (1) of [Section 14](#), which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available than the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the

suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come."

(10) It is well settled law that it is for the plaintiff/landlady to choose, which is the best suitable accommodation for her need and tenant cannot dictate to the landlord that which is best and suitable accommodation for her need.

(11) It is also well settled law that question relating to *bonafide* requirement of the appellant is essentially a question of fact and does not give rise to substantial question of law particularly when there is concurrent finding of fact. In case of **Ram Prakash Rajak Vs. Nand Kumar & Bros. & Another**² the Supreme Court in para-8 held as under :-

"8. That apart, on merits, the only other question relates to the bonfide requirement of the appellant that does not give rise to any substantial question of law. It is entirely a matter to be decided on an

2 JT 1998 (5) SC 540

appreciation of the evidence. On a perusal of the judgment of the High Court it is evident that it had interfered with a finding of fact arrived at by the Second Additional District Judge, Giridih in the first appeal on an appreciation of the evidence. The High Court made an attempt to re-appreciate the evidence and come to the conclusion that the appellant failed to prove his bona fide requirement. In fact after a scanty discussion of the evidence, the High Court observed, "in this view of the matter I find and hold that the plaintiff miserably failed on factual aspect also to prove his bona fide necessity." The High Court has acted beyond its jurisdiction in appreciating the evidence on record."

(12) Reverting to the facts of the present case and following the principles of law laid down by the Supreme Court in the afore-cited cases (supra), it is quite vivid that both the courts below have rightly held that plaintiff has established the fact that suit accommodation is required bonafidely for opening the clinic of her unmarried daughter and she has no other reasonably suitable vacant alternative accommodation of her own in the township of Raipur. The said finding of fact recorded by both the courts below is neither perverse nor contrary to the record and the substantial

question of law framed is answered in favour of the plaintiff and against the defendant.

(13) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed. No order as to costs.

(14) A decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

