

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 140 of 2019**

Bhimrao Ramteke S/o Late Shri Shankarrao Ramteke, Aged About 64 Years, R/o Bahirao Mahrapara, Raigarh, Tahsil & District Raigarh (C.G.).

---- Petitioner**Versus**

1. Kailash Kediya S/o Late Shri Vishwanath Kediya, Aged About 57 Years, R/o Bahirao Mahrapara Raigarh Tahsil & District Raigarh (C.G.).
2. State of Chhattisgarh, Through The Secretary, Law & Legislative Affairs, Mahanadi Bhawan, Mantralaya Naya Raipur, Tahsil & District Raipur (C.G.).
3. State of Chhattisgarh, Through The Secretary Housing and Environment Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Tahsil & District, Raipur (C.G.).

---- Respondents

For Petitioner	:	Shri Rajendra Tripathi, Advocate
For Respondent/State	:	Shri Vikram Sharma, Dy. Govt. Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Parth Prateem Sahu, Judge****06/08/2019**

1. Challenge to the writ petition is the order dated 29/11/2018 passed by Chhattisgarh Rent Control Tribunal, Raipur (hereinafter referred to as 'Tribunal') dismissing the appeal of petitioner on the ground of delay.

2. Brief facts necessary for disposal of this petition, are that, the petitioner was inducted as a tenant in one room of the part of accommodation on a rent of Rs.130/- per month and rent is being paid to father of respondent No.1. Respondent No.1 moved an application under Section 12 of the Chhattisgarh Rent Control Act, 2011 (hereinafter referred to as 'Act of 2011') mentioning therein that the petitioner has not deposited agreed rent of Rs.130/- per month since January, 2007. Before filing of the case of eviction before the Rent Control Authority, Raigarh (C.G.), notices as required under Section 12 of Act of 2011 was also issued on 02/05/2016, which was refused to accept and thereafter, application was filed on 22/08/2016.
3. The petitioner/non-applicant therein filed reply to eviction application and pleaded that he took premises of one room on rent from late Vishwanath Kediya, son of Babulal Kediya (father of respondent No.1/landlord) and he used to pay rent regularly at the rate of Rs.130/- per month. After death of Vishwanath Kediya rent is being paid to one Ramesh Kediya. It was denied in the reply that respondent No.1 is entitled to receive any rent or vacant possession of suit accommodation.
4. The Rent Control Authority, after conclusion of trial of case on the basis of pleadings made by respective parties as well as evidence placed on record by them, held that applicant being the son, is in possession of building where suit accommodation in question is situated, and therefore, held to have locus to file an application for eviction and also entitled for getting the vacant possession of accommodation. The application was allowed on 30/07/2018 by the Rent Control Authority after recording that

all the pre-conditions as provided in the Schedule 2 of Section 12 of Act of 2011 has been complied with and passed the order of eviction along with arrears of rent of Rs.15,080/-.

5. The petitioner dissatisfied with the order of Rent Control Authority passed against him, preferred an appeal before the Tribunal under the provisions of Section 13 of Act of 2011. The petitioner has also filed an application for condonation of delay in filing the appeal.
6. The application for condonation of delay was objected by respondent No.1/landlord and after hearing respective counsel for both the parties, the Tribunal dismissed the application for condonation of delay in filing appeal holding that reasons assigned in the application did not appear to be sufficient, bonafide and petitioner/applicant himself was negligent. As a consequence, the appeal was also dismissed being barred by limitation.
7. Learned counsel appearing for the petitioner submits that counsel appearing before the Rent Control Authority engaged by petitioner has assured the petitioner that he will intimate the proceedings and outcome of the case, therefore, petitioner was fully dependent upon assurance given by counsel. He further submits that after passage of long time, when no intimation was received, he visited to the office of Advocate on 28/09/2018 and on that date, he came to know that his case was finally decided by the Rent Control Authority against him on 30/07/2018. Thereafter, within a period of few days, appeal was preferred by him before the Tribunal.
8. We have heard learned counsel appearing for petitioner and also perused records.

9. We have perused the pleading made in application under Section 5 of Limitation Act. The ground taken by petitioner in application for condonation of delay was that his Advocate did not inform him with regard to passing of order by the Rent Control Authority till 28/09/2018 and when he personally approached to the Advocate, then he came to know about the status of case. He mentioned in the application that after getting knowledge, immediately thereafter, he preferred an appeal.
10. The Tribunal in the impugned order has clearly recorded that respondent No.1/landlord himself intimated the fact of passing of order of eviction along with arrears of rent by the Rent Control Authority against him, even then, the petitioner has not taken any steps for challenging the order of eviction passed by the Rent Control Authority within the prescribed time. This part of order was not controverted by counsel for the petitioner nor challenged in the writ petition in very specific terms. The only ground which has been taken is that the counsel engaged by him before the Rent Control Authority has not intimated about the disposal of case against him in time.
11. Perusal of pleadings made in the application for condonation of delay under Section 5 of the Limitation Act would show that the petitioner met with his Advocate on 18/01/2018, after four months, in the month of May, 2018 and thereafter on 28/09/2018. The petitioner who is resident of Raigarh city where his Advocate is also residing as well as the Rent Control Authority is also situated there, but as per his own pleading, he did not contact with his Advocate on each date of hearing as fixed by the Rent Control Authority. It is a duty of litigant to keep in contact with his Advocate

prosecuting the case in his behalf on each and every date of proceeding, particularly, when petitioner and his Advocate residing in the same city. The pleadings made in the application under Section 5 of the Limitation Act itself shows negligent conduct of the petitioner, which has rightly been observed by the Tribunal.

12. In the larger interest of justice, we also thought it proper to peruse records of the Tribunal and the grounds taken by petitioner in the memo of appeal therein.
13. Perusal of grounds mentioned in the memo of appeal would also show that petitioner has raised the ground with respect to the ownership and title of respondent No.1 only. Once in reply to the eviction application filed before the Rent Control Authority, the petitioner himself has admitted that suit accommodation was taken on rent from late Vishwanath Kediya, son of Babulal Kediya (father of respondent No.1/landlord), then, in that circumstances, in our opinion, the petitioner comes within the definition of landlord.
14. Meaning of 'Landlord' as provided under the Act of 2011 is very wide
Definition of 'Landlord', which is reproduced below :-

(5) "Landlord" means a person who for the time being is receiving or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to receive the rent, if the accommodations were let to a tenant;"

15. The 'Rights of the 'Landlord' has been defined under the Act of 2011 in Schedule 2. Clause 11 of Schedule 2 provides for the notice of eviction to tenant and its period, which is reproduced herein-below:-

“11. Right to seek from the Rent Controller eviction of the tenant on the following grounds :

- (a) If the tenant is a habitual defaulter in payment of rent and/or other dues.
- (b) If the tenant causes, or allows to be caused, substantial damage to the accommodation, for any reason whatsoever.
- (c) If the tenant uses the accommodation for purpose(s) other than that for which it was leased out.
- (d) If the tenant becomes a social nuisance.
- (e) If the tenant is convicted under any section of the Indian Penal Code.
- (f) For carrying out major renovation work which is not possible with the tenant housed in.
- (g) On 3 months notice to the tenant in writing, if the accommodation is required for own occupation and/or occupation by any member of the family including spouse, parent(s), son(s), daughter, daughter(s)-in-law, son(s)-in-law.
- (h) On 6 months notice to the tenant in writing, without any obligation to assign any reason, but on the condition that the accommodation will not be leased out at a higher rent for atleast 12 months thereafter :

Provided, however, that in case of the following

special categories of landlords and/or their spouse desiring the accommodation back for own use, the period of notice shall be one month: current or retired government servants, widows, personnel of the armed forces, persons coming to physical or mental handicap, and senior citizens (above the age of 65 years).”

16. The petitioner has not raised any ground with respect to non-compliance of any of provisions of Schedule 2, which provides the right of landlord to seek eviction of tenant after serving three months notice on the tenant as applicable to this case and in this case, the Rent Control Authority has already recorded that three months notice has been given through the Advocate by respondent No.1.
17. In view of aforementioned discussion, we are not inclined to interfere with the impugned order passed by Tribunal in the facts and circumstances of the case. The writ petition being devoid of merit, is liable to be and is hereby dismissed.
18. At this juncture, learned counsel for petitioner submits that as the eviction notice has already been issued against him by competent Court, he seeks for thirty days time to vacate the suit accommodation.
19. We have given thought to the prayer made by learned counsel for the petitioner. Though the eviction order was passed by the Rent Control Authority on 30/07/2018 i.e. about one year ago, but looking to the rainy season and hardship of the petitioner to search for new accommodation, we deem it fit and proper to accept the prayer made by learned counsel for the petitioner.

20. In view of above, the petitioner is granted thirty days time from today to handover vacant possession of the suit accommodation to landlord/respondent No.1.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh