

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 17-7-2019

Delivered on 19-8-2019

FA No. 194 of 2009

- Surya Kant Thakur, aged about 30 years s/o. Shri Om Prakash Thakur, r/o. Housing Board Colony, BALCO Nagar, Korba, Tahsil & District Korba (CG).

---- Appellant/defendant

Versus

- Ramchandra Chetty aged about 53 years, s/o. Sri K.V.Chetty, r/o. CSEB Colony, Quarter No. ND-66, Korba East, Tahsil and District Korba (CG).

---- Respondent/plaintiff

For appellant : Mr. Sanjay Patel, Advocate.

For respondent : Mr Ravindra Sharma, Mr. Prateek Sharma and Mr. Ashutosh Shukla, 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 13-10-2009 passed by 2nd Additional District Judge (FTC), Korba (CG) in Civil Suit No. 5-A/2007 wherein the said court decreed the suit filed by the respondent/plaintiff for eviction of the appellant/tenant from shop No.1 area 15 x 12 sq.ft and open land in the back side of

the shop area 2800 sq.ft., situated at Kosabadi near Niharika Talkies, Korba and for recovery of arrears of rent.

2) Respondent/plaintiff filed a suit for eviction and arrears of rent against the appellant for shop and open place as mentioned above which was given on rent @ Rs.6200/- per month. Rent note was executed on 1-11-2001. It was a tenancy for three years which is started from 1-11-2001 to 31-10-2004. The suit was filed on the ground that the respondent requires the shop as he wishes to open the shop for his son. It was further case of the respondent that the appellant re-constructed over backside of the shop for which notices have been issued by the Municipal Corporation, Korba. The other ground for eviction was that the appellant has not paid arrears of rent. As per the appellant he has deposited the rent @ Rs.1200/- per month and deposited Rs.1,20,000/- as security amount. Later on, he gave Rs.2,00,000/- for reconstruction of shop to the respondent and it was oral agreement between the parties that Rs.2,00,000/- shall be adjusted in rent amount. As per the appellant, the trial Court passed the decree against the fact and legal aspect of the matter.

3. Learned counsel for the appellant submits as under.

- i) The rent is paid regularly by the appellant to the respondent and when notice is issued by the respondent to the appellant

on 11-8-2006, the arrears of rent which was due was deposited. Nothing remains to be paid, therefore, finding of the trial court is not sustainable.

- ii) The trial court failed to consider regarding deposit of Rs.1,20,000/- and Rs.2,00,000/- by the appellant with the respondent which is not adjusted against rent.
- iii) The trial court failed to appreciate the provisions of Chhattisgarh Accommodation Control Act, 1961, (for short, the Act, 1961”), therefore, finding of the trial court is liable to be set aside.

4) On the other hand, learned counsel for the respondent would submit that the appellant was never regular in paying the rent and notice was issued to him on 11-8-2006 which was received by the appellant on 14-8-2006. The arrears of rent due from April 2004 was deposited on 24-12-2009, therefore, finding of the trial court regarding eviction of the appellant is just and proper which is not liable to be interfered while invoking jurisdiction of the appeal.

5) I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6) The question for consideration of this court is whether there was arrears of rent and the appellant/defendant has neither paid nor tendered the whole arrears of rent legally recoverable from him within 30 days on which a notice of demand for the arrears of rent has been served on him by the respondent..

7) The respondent/plaintiff adduced evidence of Ram Chandra (PW/1), Imtiyaz Khan (PW/2), Bhupendra Soni (PW/3), and N.K. Datta(PW/4). As against this, appellant examined Suryakant thakur (DW/1), Daljit Singh (DW/2) and Karan Singh Thakur (DW/3). Document Ex.P/8 is rent note and as per this note monthly rent was settled between the parties to the tune of Rs.6,200/- per month. Though it is deposed by the witnesses of the appellant that Rs.1,20,000/- was deposited as security amount but the fact remains that security amount was returnable at the time of vacating the premises. There is nothing on record to show that this amount was adjustable against monthly rent. Again, it is deposed by the witnesses of the appellant that Rs.2,00,000/- was given to the respondent by the appellant for construction of shed but same is not substantiated by any documentary evidence, therefore, it is not established that any amount was given by the appellant to the respondent for construction of shed in absence of any documentary evidence. Notice was issued to the appellant on 11-8-2006 as per Ex.P/1 for depositing arrears of rent which was due

from April 2004 to July 2006 which was received by the respondent on 14-8-2006 as per Ex.p./3, but arrears of rent was not paid within two months from the service of notice i.e., upto October, 2006. Arrears of rent to the tune of Rs.2,39,600/- was deposited on 24-12-2009 in civil court deposit. Apparently, arrears was not paid within two months and it is paid after more than three years, therefore, trial Court is right in holding that the rent was neither paid nor tendered after demand of notice within two months and the appellant/tenant is liable to be evicted under Section 12(1)(a) of the Act, 1961.

8) Learned counsel for the appellant would further submit that he has deposited the rent, therefore, finding of the trial court is not sustainable.

9) In view of this court, argument is without substance. The amount which deposited in civil court during pendency of suit is interlocutory matter which has no bearing with the merit of the case. The law is well settled and when rent is not deposited within two months of notice, appellant was liable to be evicted from the premises in question. Argument advanced on behalf of the appellant is not sustainable.

10) The trial Court discussed the entire oral and documentary evidence and finding of the trial Court is based on relevant material placed on record and same is not based on irrelevant or

extraneous material. After re-assessing the evidence, this court has no reason to substitute contrary finding. The appeal is liable to be dismissed.

11) Accordingly, the decree is passed against the appellant and in favour of the respondent as under:

- i) The appeal is dismissed with cost.
- ii) appellant to bear the cost of the respondent through out.
- iii) Pleader's fee, if certified, as per schedule or whichever is less.
- iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju