

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 96 of 2011

Reserved on : 31.07.2019

Delivered on : 30.08.2019

Manish Kashyap, S/o Rajendra Kashyap, aged about 41 years, Proprietor-Hariom Auto Deal, Pachpedi Chowk, Near Police Station- Raipur, Tahsil & District- Raipur (C.G.)

---- Appellant

Versus

Smt. Rajkumari Dewangan (Dead) through Lrs.

1. Arvind Dewangan, S/o Pawan Kumar Dewangan, aged about 45 years, R/o Rawanbhata, Near Kali Mandir, Ring Road No. 1, Raipur (C.G.)
2. Prahlad Dewangan, S/o Pawan Kumar Dewangan, aged about 43 years, R/o Near Sohaga Mandir, Brahman Para, Raipur (C.G.)
3. Virendra Dewangan, S/o Pawan Kumar Dewangan, aged about 41 years, R/o Near Sohaga Mandir, Brahman Para, Raipur (C.G.)
4. Fanindra Dewangan, S/o Pawan Kumar Dewangan, aged about 38 years, R/o Near Sohaga Mandir, Brahman Para, Raipur (C.G.)

---- Respondents

For Appellant : Mr. P.R. Patankar, Advocate.

For respondents : Mr. Manoj Paranjpe & Mr. Shubhank Tiwari, Advocates.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 07.04.2011 passed by Seventh Additional District Judge, Raipur (C.G.) in Civil Suit No. 21A/2009, wherein the said court decreed the suit filed by the original respondent namely Smt. Rajkumari Dewangan/ plaintiff (Present respondents are legal representatives of said Smt. Rajkumari

Dewangan) for eviction from shop situated at Tikrapra @ Gabarapara, Pachpedinaka Chowk ahead of police outpost shown in the map filed with the plaint and for payment of arrears of rent.

2. The original respondent filed a suit for eviction of one shop given in rent to the appellant/ tenant for rent of Rs. 1500/- per month. The first rent agreement was executed between the parties on 08.08.2004 for the period commencing from 01.06.2004 to 30.06.2005, thereafter, second rent agreement was executed on 12.07.2005 for the period commencing from 30.08.2005 to 30.07.2006. The suit was filed on the ground of bonafide need that she requires the shop for business of her son Fanindra Dewangan and also claimed arrears of rent from December, 2007 to February, 2009 amounting to Rs. 27,000/-. After recording evidence of both side and after hearing the parties, the trial court decreed the suit as mentioned above.
3. Learned counsel for the appellant submits as under:-
 - (i) Fanindra Dewangan (PW-3) deposed before the trial court that the landlord is having four shops and one shop (third number) is vacant, therefore, they can fulfill their requirement by the shop which is available.
 - (ii) The appellant is regularly paying the rent, therefore, he cannot be evicted on the ground of arrears of rent.
 - (iii) The trial court has not evaluated the evidence in its true perspective, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same 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 in which judgment and decree has been passed.
6. First question for consideration before this Court is whether the ground of eviction is available due to arrears of rent. As per evidence of respondents side, the appellant/ tenant has not paid arrears of rent from December, 2007 to February, 2009 @ Rs. 1500/- per month which comes out to Rs. 27,000/-. A notice was served to him on 30.12.2008 (Ex. P/9) which was received by the appellant as per Ex. P/10 which is acknowledgment. The notice was replied on 30.01.2009 as per Ex. P/11. From the evidence, it is established that the arrears of rent to the tune of Rs. 27,000/- was not paid within two months from the date on which notice of demand for arrears of rent was served and the trial court decreed the suit for arrears of rent vide judgment dated 07.04.2011.
7. It is contended on behalf of the appellant that Rs. 10,000/- was deposited as earnest money, but the same cannot be termed as payment of arrears of rent. Any earnest sum which is deposited at the time of rent agreement can be refunded at the time of vacation of premise, therefore, from the entire evidence on record, it is proved that the ground under Section 12(1)(a) of the Chhattisgarh

Accommodation Control Act, 1961 (for short "the Act, 1961") is available to the respondents for eviction of the appellant.

8. Second question for consideration before this Court is whether the ground under Section 12(1)(f) is available to the respondents. Admittedly, the premise in question is rented for non-residential purpose. As per evidence of respondents side, the original respondent was having four sons and seven daughters and as per evidence, her son Virendra Dewangan is unemployed. Again, her two grand son namely Laxminarayan Dewangan & Ved Prakash Dewangan are also unemployed. It is also deposed before the trial court that one son namely Fanindra Dewangan is running auto repair shop in rented premise. The appellant side argued that one shop is vacant, therefore, the same can be used for running business and bonafide requirement is not established for evicting the premise in question.
9. From the evidence, it is clearly established that the original respondent is having large family. Her one son Virendra Dewangan is unemployed. Fanindra Dewangan is running shop in rented premise and again, her two grand son namely Laxminarayan Dewangan and Ved Prakash Dewangan are also unemployed. The landlord cannot be asked to run his shop in rented premise and it is choice of the landlord as to which shop is suitable for running his business. The tenant or the court cannot dictate the landlord. Looking to the entire evidence, bonafide requirement of landlord is established.
10. It is contended on behalf of the appellant that the original respondent

namely Smt. Rajkumari Dewangan did not depose before the trial court, therefore, bonafide requirement is not established and version of power of attorney holder namely Arvind Dewangan is not sufficient for establishing the requirement. In the present case, the power of attorney holder is son of original respondent Smt. Rajkumari Dewangan namely Arvind Dewangan. As the power of attorney holder is family member of landlord, he is aware about tenancy and bonafide requirement. If power of attorney holder would have been stranger, the position would have been different, but that is not the case here, therefore, the version of Arvind Dewangan can be legally acted upon and looking to the entire evidence on record, this Court has no reason to record contrary finding what is recorded by the trial court regarding bonafide requirement. Argument advanced on behalf of the appellant is not sustainable.

11. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellant and in favour of the respondents on the following terms and conditions:-

- (i) The appeal is dismissed with cost.
- (ii) The appellant to bear cost of the respondents throughout.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge