

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 167 of 2018

Reserved on : 19.07.2019

Delivered on : 19.08.2019

1. Ayan Sarkar, aged about 44 years.
2. Ankur Sarkar, aged about 44 years.

Both S/o Late A.K. Sarkar, M/s. Raipur Agencies, Raipur, Tahsil & District- Raipur (C.G.)

---- Appellants

Versus

Prakash Kumar Jaisawal, aged about 33 years, S/o Shri Suraj Prasad Jaisawal, R/o Near Gujrat School, Sindhi Market, Raipur, Tahsil & District- Raipur (C.G.)

---- Respondent

For Appellants : Mr. N. Naha Roy, Advocate.

For respondent : Mr. Sudeep Agrawal, Advocate.

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 11.12.2017 passed by Fourth Additional Judge, Raipur to the Court of First Additional District Judge, Raipur (C.G.) in Civil Suit No. 11-A/2013, wherein the said court decreed the suit filed by the respondent/ plaintiff for eviction of the appellants/ defendants from premise No. 14/56, area 194 sq.ft. (out of 636 sq.ft.) situated at Pt. Jawahar Lal Nehru Ward, Sindhi Market, Raipur shown in the map attached with the plaint, which is a shop and for payment of arrears of rent/ compensation.

2. The respondent/ plaintiff filed a suit on 21.01.2011 under Section 12(1)(a) & 12(1)(f) of the Chhattisgarh Accommodation Control Act, 1961 (for short "the Act, 1961") for eviction of the appellants/ defendants from the shop in question and arrears of rent. The appellants are running their business as a firm named and styled as M/s Raipur Agencies in the suit shop which was taken on rent by their father from erstwhile owner of the suit shop namely Ved Prakash Gulati, Balkrishna Gulati & Ravindra Kumar Gulati. The owners have sold the property on 26.02.2001 to the respondent through registered sale-deed and the respondent became landlord by operation of law. As per the appellants, the respondent issued a notice for eviction of shop and for payment of arrears of rent at the rate Rs. 2,500/- per month. The said notice was sent on 28.07.2010 which was not complied, therefore, the suit was filed.
3. Learned counsel for the appellants submits as under:-
 - (i) The appellants are not tenant of the respondent and monthly rent was earlier fixed to Rs. 400/-, therefore, the appellants were not under obligation to pay rent at the rate of Rs. 2,500/- per month to the respondent without there being any rent note for the enhanced amount.
 - (ii) The trial court fixed the interim rent to the tune of Rs. 1,000/- per month which was paid by the appellants regularly, therefore, ground of eviction for arrears of rent is not available to the respondent.
 - (iii) Suraj Prasad Jaisawal (PW-2) deposed before the trial court

that the shop in their possession is sufficient for their work, therefore, bonafide requirement is not established.

(iii) The trial court has not evaluated oral and documentary 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 respondent submits as under:-

(i) After purchasing the shop in question, the respondent is landlord and the appellants are his tenant.

(ii) Notice is served to the appellants on 28.07.2010 for payment of arrears of rent and for vacating the premise, but no rent was paid, therefore, the trial court is right in holding that the appellants are liable to be evicted.

(iii) From evidence of Prakash Kumar Jaisawal (PW-1), Suraj Prasad Jaisawal (PW-2) & Abdul Rasid (PW-3), it is established that the shop in question is bonafidely required by the respondent for opening business which is unrebutted, therefore, the finding arrived at by the trial court is not liable to be interfered with invoking jurisdiction of 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 appellants have paid or tendered the whole of the arrears of rent

legally recoverable from them within two months of the date on which a notice of demand for the arrears of rent has been served on them by the landlord in the prescribed manner. From evidence of respondent side and the notice Ex.P/2, it is established that the notice was served to the appellants on 28.07.2010 for arrears of rent and for eviction of the premise. Admittedly, the rent was not deposited within two months from the date of service of notice. Ayan Sarkar (DW-1) who is appellant No. 1 deposed before the trial court that the agreed rent was earlier Rs. 400/- per month and he also admitted that the shop was sold to the respondent by his landlord. The suit was filed on 13.01.2011, but agreed rent of Rs. 400/- was not deposited in the court regularly after filing of the suit. When the agreed rent is not paid which was legally recoverable from the appellants within two months of notice or within two months of filing of the suit, the trial court is right in holding that the ground under Section 12(1)(a) of the Act, 1961 is available to the respondent.

7. From evidence of respondent side, it is clear that he is running a shop in some other place on rent. When the respondent has purchased the shop in question, he cannot be asked to continue with the rental shop. The landlord can determine which shop is suitable for him and no one can ration his discretion. From evidence of respondent side, it is clearly established that the respondent is bonafidely required for starting his business in the shop in question and he has no other non-residential accommodation of his own in his occupation.
8. Learned counsel for the appellants submits that Suraj Prasad Jaisawal

(PW-2) deposed before the trial court (Para 9 & 10) that they are having shop which is sufficient, therefore, finding of the trial court is not correct. Argument advanced on behalf of the appellant is not sustainable. As per evidence of Prakash Kumar Jaisawal (PW-1) (Para 7), he is running a shop on rent. There is no document on record that the respondent is owner of any other shop, therefore, the finding arrived at by the trial court is not liable to be interfered with.

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

- (i) The appeal is dismissed with cost.
- (ii) The appellants to bear costs of the respondent 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