

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 340 of 2007**

Mittal Roadways, A Proprietorship firm through:
Proprietor Suresh Kumar Gupta, Aged about 58 years,
S/o Late Banwari Lal Gupta, C/o M/s Mittal
Roadways, Aamanaka, G.E. Road, Raipur R/o Samta
Colony, Raipur, Chhattisgarh.

---Appellant/Defendant

Versus

Firoz Khan, Aged about 38 years, S/o Ayu Khan, C/o
M/s. K.B. Agency, Aamanaka, G.E. Road, Raipur,
Chhattisgarh.

----Respondent/Plaintiff

For Appellant	: Ms. Juhi Jaiswal, Advocate
For Respondent	: Mr. R.S. Patel, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

17/10/2019

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/defendant under Section 100 of the CPC.
2. Ms. Juhi Jaiswal, learned counsel for the appellant/defendant would submit that the first appellate Court ought to have seen that defendant

was not duly noticed and so, he could not appear before the trial Court to contest the suit on merits and consequently, the decree granted against him under Sections 12 (1) (a) and 12 (1) (f) of the Act is on perverse grounds, therefore, this second appeal deserves to be admitted by formulating substantial question of law.

3. In Civil Suit No. 15-A/2006 filed by the plaintiff/respondent herein for eviction of defendant/appellant based on the provisions contained under Section 12 (1) (a) and 12 (1) (f) of the Chhattisgarh Accomodation Control Act, 1966 (hereinafter referred to as 'the Act'), ex-parte decree dated 28/04/2006 was passed against the defendant by the trial Court being aggrieved by which Civil Appeal No. 5-A/2007 was preferred by him which was dismissed by the first appellate Court finding no merits.

4. The ex-parte decree dated 28/04/2006 passed by the trial Court in favour of plaintiff was challenged in the first appellate Court by the defendants under Section 96 of the CPC. It is correct to say that the right of appeal under Section 96 (2) of the CPC is statutory in nature and remedy under Order 9 Rule 13 and Section 96 (2) of the CPC are concurrent, but in an application filed under Order

9 Rule 13 of the CPC, defendant may question the correctness of the order posting suit for ex-parte by the trial Court and also contend that he has sufficient and cogent reasons for not being able to appear before the trial Court, however, the aforesaid ground cannot be raised in the first appeal against the ex-parte decree preferred under Section 96 (2) of the CPC [see: **Bhanu Kumar Jain Vs. Archana Kumar and Anr.**¹ And **Bhivchandra Shankar More Vs. Balu Gangaram More and Ors.**²]. In view of that I do not find this ground that defendant/appellant was not duly noticed in the suit good enough to formulate any substantial question of law.

5. Coming to the next submission made by learned counsel for the appellant that the decree was passed on perverse grounds under Sections 12 (1) (a) and 12 (1) (f) of the Act, both the Courts below have concurrently held that plaintiff is entitled for decree as defendant has failed to make payment of rent for a period of two years i.e. from January, 2004 to January, 2006, and plaintiff has no alternative suitable accomodation in his possession in the township of Raipur and he requires the suit accomodation bonafidely for

1 (2005) 1 SCC 787

2 (2019) 6 SCC 387

non-residential purpose which is a finding of fact based on evidence available on record and does not give rise to any substantial question of law for determination in this second appeal, particularly, taking in view that the decree has already been executed on 21/08/2006.

6. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet