

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 181 of 2018

Vikas Gurudwan S/o Shri R. C. Gurudwan, Aged About 40 Years,
R/o D. P. Vipra College Road, Near Chantidih Petrol Pump, Ashok
Nagar, Seepat Road, Sarkanda, Bilaspur, Civil and Revenue
District Bilaspur, Chhattisgarh

---- Appellant/plaintiff

Versus

1. Laxmi Narayan Dhruva S/o Late Jaitram Dhruva Aged About 52
Years R/o Basant Vihar S.E.C.L. Colony, Seepat Road, Bilaspur,
Civil and Revenue District Bilaspur, Chhattisgarh,
2. Vinay Kumar Shrivastava S/o Omprakash Shrivastava Aged
About 43 Years R/o C-32, Revenue Colony, Sarkanda, Bilaspur,
Chhattisgarh,
3. Smt. Swati Shrivastava W/o Vinay Kumar Shrivastava Aged
About 41 Years R/o C-32, Revenue Colony, Sarkanda, Bilaspur,
Chhattisgarh

----- Respondents

Along with

WPC No. 601 of 2018

Vikas Gurudwan S/o Shri R C Gurudwan Aged About 40 Years
R/o D P Vipra College Road, Near Chantidih Petrol Pump, Ashok
Nagar, Seepat Road, Sarkanda, Bilaspur, Civil and Revenue
District Bilaspur, Chhattisgarh.,

---- Petitioner

Versus

1. Chhattisgarh Rent Control Tribunal Through Registrar,
Chhattisgarh Rent Control Tribunal, Old R D A Building, First

Floor, Shastri Chowk, Raipur, Chhattisgarh., District: Raipur, Chhattisgarh

2. The Rent Controlling Authority District Bilaspur, Near Collectorate Bilaspur, Chhattisgarh.,
3. Vinay Kumar Shrivastava S/o Omprakash Shrivastava Aged About 43 Years R/o C-32, Revenue Colony, Sarkanda, Bilaspur, Chhattisgarh.,
4. Smt. Swati Shrivastava W/o Vinay Kumar Shrivastava Aged About 41 Years R/o C-32, Revenue Colony, Sarkanda, Bilaspur, Chhattisgarh.,
5. Tahsildar Bilaspur Tahsil Bilaspur, District Bilaspur, Chhattisgarh.,

.....Respondents

For the Appellant	:-	Mr. Neeraj Choubey, Advocate
For the Respondents	:-	Mr. Shashank Thakur, Advocate
For the Respondent No.5	:-	Mr. Avinash Singh, Panel Lawyer in WPC No. 601 of 2018

Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board By Prashant Kumar Mishra, J.

03.01.2019

1. First Appeal No. 181 of 2018 is an appeal filed by the tenant challenging the judgment and decree passed by the trial Court directing his eviction from the suit property which is a residential accommodation situated at near Ashok Nagar Petrol Pump, D.P. Vipra College Road, Sipat Road Bilaspur.

2. WPC No. 601 of 2018 is arising out of an order passed by the Rent Control Tribunal by which the appellant's appeal has been dismissed by the Tribunal on the ground of limitation.
3. Both the matters have been posted for analogous hearing as they relate to the same accommodation.
4. Undisputedly, the appellant/plaintiff is the tenant of respondent No.1 in the suit accommodation from August 2009, by virtue of a rent note executed between the parties on 31.08.2009. According to the plaintiff/tenant, his landlord Laxmi Narayn Dhruva had agreed to sale the suit accommodation for Rs. 19,75,000/- in October 2009 and agreed to receive advance amount Rs. 1,50,000/-, however, despite such oral agreement the terms of the agreement were not reduced to writing. In the meanwhile, plaintiff/tenant renovated the suit accommodation with the consent of the landlord.
5. Laxmi Narayan Dhruva received a sum of Rs. 50,000/- as advance, however, he did not receive the remaining advance amount of Rs. 1,00,000/- nor executed the sale deed despite repeated request by the plaintiff/appellant.
6. The defendant denied to have ever agreed to sale the suit property to the plaintiff. According to the defendant, the suit has been filed to raise defence in the eviction suit filed by him before the civil Court. Both the parties led evidence to substantiate their case. The plaintiff produced electronic document in form of recording of conversation between him and Laxmi Narayan

Dhruva in the presence of witness Ritesh Sharma and Ashwani Pandey and the said electronic document was in form of compact disc (CD). Plaintiff also produced Ritesh Sharma and Ashwani Pandey as his witnesses. On the other hand, defendant examined himself as his only witness.

7. The trial Court has found that the plaintiff has failed to prove the agreement and further that the suit is barred by limitation.
8. It is argued that the trial Court has wrongly refused to read the electronic document in evidence, despite the same having been exhibited in course of evidence vide Ex.P-2 (transcript). It is also argued that the transcript clearly proved existence of an agreement between the parties. It is further argued that the time being not the essence of the contract the suit having been filed on 19.10.2016 i.e. with three years from the date, the defendant Laxmi Narayan Dhruva refused to execute the sale deed in his statement recorded in the previous suit bearing civil suit No. 23-A/2011, the suit is not barred by limitation.
9. Per contra, learned counsel for the respondents would argue that the suit is hopelessly barred by limitation. He would submit that admissibility of the electronic document depends on satisfaction of the provision contained in Section 65B of the Evidence Act, therefore, the same having not been complied with, the trial Court has rightly rejected the document Ex.P-2.
10. It is plaintiff's own case that the rent note was executed in August 2009, thereafter the agreement was entered between the parties

in September 2009. Laxmi Narayan Dhruva preferred a civil Suit No. 23-A/2011 on or about 11.04.2011 for the appellant eviction from the suit premises. Plaint of the suit has been filed as Ex.D-2 and the written statement filed by the appellant in the said suit is Ex.D-3. The written statement was filed on 25.11.2011, therefore, prior to this date plaintiff Vikas Gurudwan was aware that Laxmi Narayan Dhruva having filed eviction suit against him and is not willing to sale the property to him. However, despite this Vikas Gurudwan did not prefer any civil suit, soon after receipt of notice of the suit filed by Laxmi Narayan Dhruva. He waited till the statement of Laxmi Narayan Dhruva was recorded in the previous suit wherein he refused to execute the sale deed. It is this date which has been taken by the plaintiff to be the date of refusal to execute the sale deed. The present suit has been filed on 19.10.2015 i.e. after more than three year from the date of agreement in September 2009, or after more than 3 years from the date of service of notice of the suit filed by Laxmi Narayan Dhruva. There being no express terms of the contract reserving the right to execute the sale deed as and when agreed between the parties on happening of one or the other event, the date on which the defendant refused to execute the sale deed should be taken as the date on which he filed the suit for eviction against the appellant/tenant. Thus, the present suit having been filed after more than 3 years the same has rightly been held to be barred by limitation.

11. The argument that the transcript of electronic documents should have been taken as proof of a valid subsisting agreement of sale between the parties deserves to be rejected for the sole reason that even if, any such conversation has happened, the same having not been reduced to writing, the electronic evidence of existence of such agreement has to be produced before the Court as an admissible piece of evidence in terms of requirement of law as contained in Section 65B of the Evidence Act.

12. The Supreme Court has held, time and again, as to the requirement of proof of admissible electronic evidence. In the matter of **Anvar P.V vs P. K. Basheer & Ors 2014 (10) SCC 473** the Supreme Court has held thus in paragraph 15 to 18.

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;
- (d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of examiner of electronic evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.

13. In respect of admissibility of electronic document, we have examined the evidence in form of transcript of the electronic document vide Ex.P-2, in the light of law laid down by the Supreme Court. We find that the plaintiff has not filed any certificate of the author of the CD. If the plaintiff himself has recorded the evidence, he should have disclosed the Court and should have produced the instrument which was used to record such evidence. It is required to be pleaded and proved as to the

storage of such electronic evidence from September, 2009 till the date on which it was presented in the Court as to whether the same was in the safe custody or not. There is no certificate by the Forensic Science Laboratory authenticating the genuineness of the electronic document certifying that the electronic record has not been doctored or manipulated. In the absence of such manner of proof, document Ex.P-2 is not admissible in eviction and the trial Court has not committed any illegality in refusing to rely on such document.

14. For the above stated reason, we are in full agreement with the judgment and decree passed by the trial Court refusing to exercise the discretion of directing specific performance of agreement.
15. Accordingly, First Appeal No. 181 of 2018 is dismissed.

WPC No. 601 of 2018

1. In this writ petition challenge is to the Rent Control Tribunal's order refusing to condone the delay of 12 days in filing the appeal which in turn was preferred against the order of eviction passed by the Rent Controlling Authority.
2. At the outset, learned counsel for the respondent would submit that ordinarily delay of 12 days should have been condoned because such small delay by itself does not demonstrate any such callous negligence on the part of petitioner/ tenant.
3. Considering the entire fact situation of the case, we are satisfied the Tribunal should have condoned the delay of 12 days in filing

the appeal, therefore, the appellate order passed by the tribunal is set aside and the matter is remitted back to the Rent Control Tribunal for deciding the petitioner/ tenant appeal on merit. Let the Tribunal decide the appeal within a period of 3 months from today.

4. The writ petition is disposed of in the above terms.

Sd/-
Judge

Prashant Kumar Mishra

Sd/-
Judge

Vimla Singh Kapoor