

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 192 of 2014****Reserved on : 16.05.2019****Delivered on : 21.06.2019**

Anil Kumar Luniya, S/o Dharamchand Luniya, aged about 38 Years, R/o HIG 110, Padmanabpur, Durg, Tahil & District- Durg (C.G.)

---- Appellant**Versus**

1. Shri Jug Mahadev Education Society, Durg, Registration No. 4338, Through- Pradhan Secretary Sushil Kumar Chandrakar, S/o Narayan Lal Chandrakar, Mukht Nagar, Borsi Road, Durg, Tahsil & District- Durg (C.G.)
2. Sushil Chandrakar, S/o Shri Narayan Lal Chandrakar, aged about 39 Years, Pradhan Sachiv- Shri Jug Mahadev Education Society, R/o Mukht Nagar, Borsi Road, Durg, Tahsil & District- Durg (C.G.)
3. Bharat Chandrakar, S/o Shri Kunjlal Chandrakar (At present his wife Bharti Chandrakar, aged about 45 Years elected on the post of President), aged about 50 Years, President- Shri Jug Mahadev Education Society, R/o Mukht Nagar, Borsi Road, Durg, Tahsil & District- Durg (C.G.)

---- Respondents

For Appellant	:	Mr. Anil Singh Rajput, Advocate.
For Respondents	:	Mr. Anand Shukla, 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 07.11.2014 passed by Sixth Additional District Judge, Durg, District- Durg (C.G.) in Civil Suit No. 29A/2013, wherein the said court dismissed the suit filed by the appellant/ plaintiff for eviction of the respondents from tenanted

premises, recovery of arrears of rent and compensation.

2. As per the appellant, he is owner of the land bearing Survey No. 45/1, area admeasuring 0.344 Hectare situated at Potiyakala, Patwari Halka No. 19, one part of above 0.344 Hectare land i.e. 0.202 Hectare or 22,000 sq.ft. in which constructed house on 5,000 sq.ft. and rest of the land is open, is called suit property. The appellant given the suit property to respondent No. 1 on rent on 30.12.1998 and rent was fixed to Rs. 3,000/- per month. The rent was increased to Rs. 5,000/- per month since January, 2003. The respondents paid the rent upto month of December, 1999, but they stopped paying the rent thereafter of the above property to the appellant. The case of the appellant is that without his permission, respondent No. 1 constructed some additional part which materially altered the accommodation to detriment of the landlord's interest or is likely to diminish its value substantially. The respondents created nuisance and done act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation. The rented premises is bonafide requirement to the appellant for his business and no other reasonable, suitable non-residential accommodation of his own in his occupation in the city or town concerned. The respondents have already purchased 18 to 19 acres of land in the name of respondent No. 1 at Village- Pulgaon, Patwari Halka No. 18, Revenue Circle- Durg, Tahsil & District- Durg (C.G.) and constructed three floors in the above land, therefore, they are liable to be evicted from the rented premises. As per the appellant, the respondents/ defendants have made some fake

documents (Ex. D/1 & D/2) for creation of their right over the property that is why the suit was filed and after hearing both side, the trial court dismissed the suit as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) Sushil Kumar Chandrakar- respondent No. 2 admitted that he has not taken permission from the appellant and Municipal Corporation, Durg regarding additional construction over the suit property, therefore, finding of the trial court that the permission was sought before construction is perverse.

(ii) The document (Ex. D/1) is forged document and the appellant denied his signature in the said document, therefore, presumption on the basis of Ex. D/1 that permission was granted to the respondents for construction, is not liable to be sustained.

(iii) The respondents created nuisance and done act which is inconsistent with the purpose for which he has admitted to tenancy of the accommodation or which is likely to affect adversely and substantially the interest of the landlord therein, therefore, decree ought to have been passed in favour of the appellant.

(iv) The trial court committed gross error by applying provision of Section 60 (b) of the Indian Easements Act, 1882 (For short "the Easements Act").

(v) The trial court failed to see that the appellant has proved his bonafide requirement to the appellant for his business and no other reasonable, suitable non-residential accommodation of his own in his

occupation in the city or town concerned.

(vi) On ground of arrears of rent as per provisions of Section 12(1) (a) of the Chhattisgarh Accommodation Control Act, 1961 (For short "the Act, 1961"), the respondents ought to have been evicted. 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 as under:-

(i) The appellant relinquished his right as per document Ex. D/1 & D/2, therefore, he is not landlord and respondents cannot be evicted as they have acquired right over the property in question.

(ii) As per evidence of Sushil Kumar Chandrakar, the construction over the property is done with permission of the landlord, therefore, the respondents cannot be evicted as the license is irrevocable.

(iii) The appellant deposed before the trial court that he has not filed any document regarding income tax return in which rent is shown as his income, therefore, it is proved that he has relinquished his right over the property.

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 as to what is nature of relation between the appellant and the respondents. The appellant examined himself as PW-1 and Nalin Kumar Luniya (PW-2) and produced document Ex. P/1 to P/30 while the respondents side adduced evidence of Sushil Kumar Chandrakar (DW-1), Santuram

Sahu (DW-2), Dileshwar Prasad Sahu @ Munna Lal (DW-3), Y.R. Kurre (DW-4) & Premendra Sharma (DW-5) and produced document Ex. D/1 to D/35.

7. As per version of Anil Kumar Luniya (PW-1), respondent No. 2 namely Sushil Kumar Chandrakar was rented the premises in question for respondent No. 1-institution and it was rented on 30.12.1998 for monthly rent of Rs. 3,000/-. The rent was increased from January, 2003 and it was increased to Rs. 5,000/- per month. Sushil Kumar Chandrakar (DW-1) admitted tenancy for a monthly rent of Rs. 3,000/-. Looking to the admission, it is clear that the appellant is landlord and the respondents are tenant in the premises in question and it is a lease as defined under Section 105 of the Transfer of Property Act, 1882 (For short "the Transfer of Property Act") and the same is lease from month to month terminable on the part of either lessor or lessee. Sections 105 & 106 of the Transfer of Property Act, reads as under:-

105. Lease defined.—A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the

rent

106. Duration of certain leases in absence of written contract or local usage.— (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.]

8. Second question for consideration before this Court is whether the appellant relinquished his right over the property in question. The respondents have based their claim on document Ex. D/1 & D/2 which is affidavit and the same is unregistered document. The property is

rented for Rs. 3,000/- per month and it is of higher value more than Rs. 100/-. Any relinquishment which purport or operate to create or extinguish any right over the property can be done only by registered document as per Section 17 of the Indian Registration Act, 1908 (For short "the Act, 1908"), therefore, no right is created in favour of the respondents on the basis of affidavit (Ex. D/1 & D/2).

9. The next question for consideration before this Court is whether the appellant permitted the respondents to construct over the land in question. There is no written document that the appellant has permitted the respondents to construct over the land in question. There is no admission of the appellant that he gave consent for construction on any part of the land in question, therefore, it is not proved that any permission was granted by the appellant for construction over the property to the respondents.
10. The trial court recorded finding (Para 31) on the basis of affidavit (Ex. D/1 & D/2) that permission was granted for construction and Ex. D/1 & D/2 are not the document for relinquishment of any right, therefore, the finding recorded by the trial court on the basis of Ex. D/1 & D/2 is contrary to the law and the same is liable to be reversed. The said finding is hereby reversed and set aside and decided that no permission for construction was given by the appellant and no right was transferred to the respondents.
11. From the record, it is established that the respondents are in possession of the tenanted premises as lessee and it is a case of lease as mentioned in Sections 105 & 106 of the Transfer of Property

Act, therefore, Section 60 of the Easements Act, is not applicable in the present case. The trial court recorded finding that it is a case of license as defined in Section 52 of the Easements Act, but the said finding is contrary to the law because it is a case of lease as defined in Section 105 of the Transfer of Property Act, therefore, finding of the trial court (Para 31) is liable to be reversed and it is decided that it is not a case of license, but it is a case of lease.

12. In the present case, admittedly, the arrears of rent was not paid even after notice issued to the respondents on 07.12.2002 as per Ex. P/13. The suit was filed on 02.12.2005 and even after filing of the suit, arrears of rent was not paid and it is paid during pendency of the suit as interlocutory matter. As per Section 12(1)(a) of the Act, 1961, the suit for eviction of tenant from any accommodation can be filed on the ground mentioned in the said section, which reads as under:-

“that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner”

13. In the present case, admittedly arrears of rent was not paid within two months of date on which a notice of demand for arrears of rent has been served on the respondents. The rent paid after filing of the suit as interlocutory matter has no bearing with the merits of the case, therefore, the respondents are liable to be evicted from the premises in question.
14. As per Section 12(1)(a) of the Act, 1961, the respondents being tenant

did not pay arrears of rent for long period and again, they claimed their right over the property on the basis of affidavit Ex. D/1 & D/2 which is not valid document for transfer of property. In this way, they have done act which is inconsistent with the purpose for which they were admitted to the tenancy of the accommodation which is likely to affect adversely and substantially the interest of the landlord therein, therefore, the respondents are also liable to be evicted on the ground mentioned in Section 12 (1)(c) of the Act, 1961.

15. The appellant- Anil Kumar Luniya (PW-1) deposed before the trial court (Para 5) that he is involved with mining operation business and his instrument namely Pokland, Crusher and other raw materials are kept in the field in which one Nalin Kumar is partner because he has no suitable accommodation in Durg and Bhilai. Version of this witness is supported by version of Nalin Kumar (PW-2). Version of both the witnesses are unrebutted and the respondents are failed to rebut the evidence adduced on the ground of bonafide requirement, therefore, it is proved that the accommodation which is let for non-residential purpose, is required bonafide by the landlord for the purpose of continuing business and he has no other reasonable, suitable non-residential accommodation of his own in his occupation in the city or town concerned. The ground under Section 12(1)(f) of the Act, 1961 is also available to the appellant and the respondents are liable to be evicted on this ground also.
16. As a fall out of the above discussion, finding arrived at by the trial court is not liable to be sustained and the same is liable to be set

aside. Accordingly, the appeal is allowed. The decree is passed in favour of the appellant and against the respondents on the following terms and conditions:-

- (i) The appeal is allowed. The respondents shall deliver vacant possession of the rented premises area 22,000 sq.ft. (5,000 sq.ft. constructed) situated at Potiyakala, Patwari Halka No. 19, bearing Survey No. 45/1 shown in the map attached with the plaint. That map shall be part and partial of the decree. The respondents shall pay arrears of rent to the appellant till vacation of the rented premises.
- (ii) The respondents to bear cost of the appellant 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