

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Second Appeal No. 95 of 2007**

Saifuddin (Dead) Through LRs :

- (a) Tasneem, Widow of Late Saifuddin, Age 46 Years.
- (b) Adnan, S/o. Late Saifuddin, Age 23 Years.
- (c) Mohammed, S/o. Late Saifuddin, Age 18 Years.

All R/o. Telipara, Lane No.1, Near Kali Mandir, Bilaspur (C.G.).

---- Appellants

**Versus**

Jyoti Prasad Shukla, S/o. Badri Prasad Shukla, Aged About 58 Years, R/o. Mohalla Khaparganj, Bilaspur, Tahsil & District Bilaspur (C.G.).

---- Respondent

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For Appellants : Mr. Chandra Shekhar Kaushik, Advocate on behalf of Mr. Ali Asgar, Advocate

For Respondent : None appears even the second call.  
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**Hon'ble Shri Justice Goutam Bhaduri**

**Judgment On Board**

**14.01.2019**

1. The instant appeal is against the judgment and decree dated 19.01.2007 passed in Civil Appeal No.21-A/2005 by the 8<sup>th</sup> Additional District Judge, Bilaspur, whereby the judgment and decree for ejectment and arrears of rent has been granted in favour of the respondent.
2. During the course of argument, learned counsel for the appellant would submit that the appellant has already vacated the premises in the month of August, 2017 and it is submitted that only the substantial question of this appeal is the question of quantum of rent is in dispute.
3. The Court while admitting the appeal on 21.01.2009 has admitted the following substantial questions of law :

*“Whether the lower appellate Court, was not justified in modifying the decree regarding arrears of rent @ Rs.50/- per month passed by the trial Court and awarding arrears of rent @ Rs.200/- per month for a period of three years without there being any material on record to justify such approach ?”*

4. Learned counsel for the appellant would submit that the learned appellate Court has without any reason and supported documents given the finding that the rent of the premises was fixed as Rs.200/- per month whereas nothing is exists on record to show and substantiate such fact, therefore, the finding which was given by the appellate Court is bad, which cannot be sustained.
5. No one represented on behalf of the respondent despite second round of hearing and frequent pass over.
6. Perused the record of the Court below.
7. In view of the submission made that the premises has already been vacated, the substantial question of law only pertains to the fact that what is the rate of the rent, which has been given.
8. The plaintiff landlord/respondent in his plaint averments has stated that the rent of the premises was Rs.200/- whereas the defendant/appellant herein has stated that the rent of the premises was Rs.50/- as it was old one. Nothing has been substantiated before the Court below by either of the parties that how much actually was rent. Both of them have stated that the rent was being paid but no receipts were issued. The statement of the witness PW-1 stated that the rent was Rs.200/- per month and in the cross-examination in chief, he has stated that the rate of rent was Rs.200/- from the initial date. No document has been filed in support of such contention. The tenant deceased has stated that

the rate of rent was Rs.50/- per month and in the averments, he has further stated that the rent was only Rs.50/-.

9. The trial Court has assessed the rate of rent to be Rs.50/- and has decreed the suit for the arrears of rent also. The trial Court while passing the decree under Section 12(1)(a) has assessed the arrears of Rs.2400/- which was prior to three years of filing the suit. The record would show that the suit was filed on 01.08.1998 and if Rs.50/- per month is assessed then in such case also for one year it will come to Rs.600/- and for three years Rs.1800/- prior to filing of suit from 01.08.1998. The appellate Court has turned down such finding on the ground that since the said Godown appears to be in market therefore Rs.50/- could not be fixed and has enhanced to Rs.200/-.
10. It is a trite law that the plaintiff who comes to the Court has to prove his case. When the plaintiff had come out with a particular fact that the amount was fixed Rs.200/- then it should have been proved by cogent and acceptable evidence merely if he says so, it cannot be accepted as gospel truth. As against, the defendant tenant has stated that the rate of rent was Rs.50/- per month, therefore, on what basis the trial Court has enhanced the rate of rent from Rs.50/- to Rs.200/- per month is not clear and without any evidence. The enhancement of rent as has been done by the appellate Court cannot be accepted, as such, finding appears to be without any evidence. Therefore, the substantial question of law is answered in favour of the appellant and it is observed that the finding recorded by the trial Court that the rate of rent was Rs.50/- is upheld. The appellant/tenant herein though has stated that the premises has been vacated in the month of August, 2017,

however, how much rent has been paid till that date is not clear and nothing has been placed on record to substantiate the same. Therefore, in such case, the appellant shall be liable to pay Rs.50/- per month as rent prior to three years from the date of filing of the suit 01.08.1998 i.e. from 01.08.1995 till August, 2017 @ Rs.50/- per month to the landlord. Accordingly, the decree be amended and drawn. No order as to cost.

11. With such observation, the appeal is partly allowed in favour of the appellants.

Sd/-  
**(Goutam Bhaduri)**  
Judge