

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 471 of 2005****Order reserved on 16.07.2019****Order passed on 19.07.2019**

Smt. Chandabai (since deceased) through LRs:-

1. Gulabchand, S/o. Phoolchand Gupta, aged about 48 years,
2. Chandrachand, S/o. Gulabchand, aged about 17 years, Minor through natural guardian next friend father Gulabchand, Both R/o. Banjari Chowk, Raipur, Distt. Raipur (C.G.) (Landlord)

---- Appellants/plaintiffs**Versus**

Govindram, aged about 65 years, S/o Gulomal Gulwani, Proprietor,
Gurunanak Stores, Ashwani Nagar, Raipur {C.G.} (Tenant)

---- Respondent/defendant

For Appellants/plaintiffs : Mr. Ram Kumar Tiwari, Advocate.
For Respondent/defendant : Mr. Sunil Otwani, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

(1) The substantial questions of law involved, formulated and to be answered in this plaintiffs' second appeal state as under:

“1. In view of the provisions of Section 18(3) of the C.G. Accommodation Control Act whether the Courts below were justified in permitting the respondent to construct the suit accommodation and recover the entire cost incurred by the respondent in such construction as rent from the appellant ?

2. Whether the application preferred by the respondent for re-entry was barred by the law of limitation as the same was preferred after six months from the date on which the cause of action arose ?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court).

(2) The appellant/landlord's suit based under Section 12(1)(h) of the C.G. Accommodation Control Act, 1961 (henceforth “Act, 1961”) was decreed by the trial Court on 10.10.1991 with a right to re-entry reserved in favour of the respondent/tenant and on appeal being preferred, it was upheld by the first appellate Court on 29.01.1996 directing the respondent/tenant to deliver the peaceful possession of the suit accommodation to the appellant/landlord within a period of two months from the date of judgment i.e. 29.01.1996, which the respondent/tenant delivered with a delay of two days i.e. on 30.03.1996, but thereafter as the appellant/landlord did not commence the work, the respondent/tenant moved an application under Section 18 (3) of the Act, 1961 stating that the repairs are not being carried out by the appellant/landlord and, thus, he may be allowed to carry out the repairs, that application was granted by the trial Court 22.02.2005 and directed for re-entry of the tenant in the suit accommodation and on appeal being preferred, it was upheld by the first appellate Court vide order dated 02.08.2005, against which instant second appeal under Section 100 of the CPC has been preferred by the plaintiffs, in which, substantial question of law has already been formulated and set-out in the opening paragraph of this judgment.

(3) Mr. Tiwari, learned counsel appearing for the appellants/plaintiffs would submit that defendant failed to deliver the peaceful possession of the suit accommodation

within the time stipulated by the first appellate Court and delivered it only on 30.03.1996 with a delay of two days and, therefore, the application under Section 18(3) of the Act, 1961 would not be applicable and decree could not have been granted by the trial Court duly upheld by the first appellate court.

(4) Per contra, counsel for the respondent/tenant would support the impugned judgment.

(5) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(6) For the sake of convenience, substantial question of law No. 2 is taken first : the question would be whether the application preferred by the respondent for re-entry was barred by the law of limitation as the same was preferred after six months from the date on which the cause of action arose ?

(7) At this stage, it would be appropriate to notice Section 18 of the M.P./C.G. Accommodation Control Act, 1961, which states as under:-

“18. Recovery of possession for repairs and re-building and

re-entry.- (1) In making any order on the grounds specified in clause (g) or clause (h) of sub-section (1) of Section 12, the Court shall ascertain from the tenant whether he elects to be placed in occupation of the accommodation or part thereof from which he is to be evicted, and, if the tenant so elects, shall record the fact of the election in the order and specify therein the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs or building or re-building, as the case may be.

(2) If the tenant delivers possession on or before the date

specified in the order, the landlord shall, on the completion of the work or repairs or building or re-building place the tenant in occupation of the accommodation or part thereof, as the case may be, within one month of the completion of such work.

(3) If, after the tenant has delivered possession on or before the date specified in the order, the landlord fails to commence the work of repairs or building or re-building within one month of the specified date or fails to complete the work in a reasonable time or having completed date or fails to complete the work in a reasonable time or having completed the work, fails to place the tenant in occupation of the accommodation in accordance with sub-section (2), the Court may, on an application made to it in this behalf by the tenant within such time as may be prescribed, order the landlord to place the tenant in occupation of the accommodation or part thereof or to pay to the tenant such compensation as the Court thinks fit.”

(8) Provisions of Section 18(3) of the Act of 1961 would be applicable if the possession of suit accommodation is handed over by the respondent/tenant to the appellants/plaintiffs within the time stipulated in the order passed by first appellate court in the instant case. The First appellate Court by its judgment & decree dated 29.01.1996 directed the respondent/tenant to deliver the vacant possession of the suit accommodation to the appellant/plaintiff within a period of two months from the date of judgment i.e. 29.01.1996, which the defendant did not deliver within time stipulated by the first appellate Court and delivered the same on 30.03.1996 with a delay of two days.

(9) The question for consideration in the instant case is whether in such circumstances, provisions contained in Section 18(3) of the Act, 1961 would be attracted and defendant/tenant was right in invoking remedy of Section 18(3) of the Act, 1961.

(10) The Constitution Bench of the Supreme Court in the matter of **Ram Nath and another Vs. M/s. Ram Nath Chhittar Mal and others**¹ while dealing with Section 15(3) of Delhi and Ajmer Rent Control Act, 1952, which is pari materia provision to section 18(3) of the Act, 1961 held that if tenant did not deliver the vacant possession of the suit accommodation on the date fixed by the trial Court, the provision of re-entry contained in Section 15(3) of the Act, 1952 would not be applicable and held as under:-

“5..... As the respondents did not deliver possession to the appellants on or before the date specified in the decree the provisions of S. 15 contained in sub-sec. (3) of that Act were not available to them and they were not entitled to be put into possession as prayed by them.”

(11) The aforesaid principle of law laid down by the Supreme Court in the above-cited case (supra) is squarely applies to facts of the instant case as in the instant case the defendant has failed to deliver to the vacant possession of the suit accommodation as directed by the first appellate Court on 29.1.1996 to be delivered within two months from the date of judgment i.e. 29.1.1996, which he delivered only on 30.03.1996 i.e. after delay of two days, as such provisions contained in Section 18(3) of the Act, 1961 would not be applicable in the instant case. As such, both the courts below are absolutely unjustified in allowing the application under Section 18 (3) of the Act, 1961 ignoring the mandatory provisions contained in Section 18 of the Act, 1961.

(12) In that view of the matter, the aforesaid question of law No. 2 is answered in favour of plaintiffs and against the defendant and in view of this finding I deem it inappropriate and unnecessary to order on substantial question of law No. 1. Judgment & decree passed by the both the courts below are set aside. Application under Section 18(3) of the Act, 1961 would stand rejected.

1 AIR 1961 SC 104

(13) The second appeal is allowed to the extent indicated hereinabove.

(14) A decree be drawn-up accordingly. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

