

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.417 of 2019Order reserved on: 6-11-2019Order delivered on: 13-11-2019

Sanjay Kumar Jain, aged about 36 years, S/o Sameer Lal Jain, R/o Kavita Complex, Korinbhatta Road, Ward No.19, Near Kamla College, Tehsil and District Rajnandgaon (C.G.)

(Respondent)
---- Appellant

Versus

1. Rohini Prasad Gupta, aged about 63 years, S/o Late Shyam Sunder Gupta, R/o Kavita Complex, Korinbhatta Road, Ward No.19, Near Kamla College, Tehsil and District Rajnandgaon (C.G.)
2. Gagandeep Gupta, aged about 27 years, S/o Rohini Prasad Gupta, R/o Kavita Complex, Korinbhatta Road, Ward No.19, Near Kamla College, Tehsil and District Rajnandgaon (C.G.)

(Plaintiffs)
---- Respondents

For Appellant:	Mr. Siddharth Dubey, Advocate.
For Respondents:	Mr. Anurag Dayal Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Order

1. Heard on admission and formulation of substantial question of law for determination in the second appeal preferred by the appellant / defendant.
2. Mr. Siddharth Dubey, learned counsel for the appellant / defendant, would submit that both the Courts have concurrently erred in holding that the plaintiffs have no reasonably suitable accommodation in their possession in the township of Rajnandgaon for their bona fide need, as the adjoining suit shop was vacated by the defendant's brother Shrichand Jain in the year 2013 which was

let out to Jitendra Sindhi on monthly rent of ₹ 4,500/- and one more shop had fallen vacant which was also let out as such, the plaintiffs' requirement is not bona fide and therefore both the Courts below ought not to have granted decree under Section 12(1)(f) of the Chhattisgarh Accommodation Control Act, 1961, (for short, 'the Act of 1961') as such, it is a fit case where the appeal deserves to be admitted by formulating an appropriate substantial question of law for hearing.

3. The plaintiffs filed suit for eviction against the defendant stating inter alia that the defendant is their tenant on monthly rent of ₹ 2,350/- of the suit shop situated at Kavita Complex, Ward No.19, Near Kamla College, Rajnandgaon on Ground Floor, Shop No.3. It is further pleaded that the suit shop is required for expansion of the plaintiffs' business, as it is adjoining to the present shop run by the plaintiffs in the name and style of Tanishq Cloth Shop and only a common wall has to be dismantled for expansion of the present shop and the plaintiffs have no other shop. It was also pleaded that the other shop which had fallen vacant is after the staircase and in order to expand the business, the staircase has to be dismantled which goes to the first floor, as such, it is practically impossible for the plaintiffs to get the staircase dismantled for expansion of their present shop, therefore, the plaintiffs have no other reasonably suitable accommodation in the township of Rajnandgaon for expansion of their present business.
4. The defendant pleaded that the suit shop vacated by his brother was let out to Jitendra Sindhi and one another satisfies the bona fide requirement of the plaintiffs and as such, the plaintiffs are

having suitable alternative accommodation which they have let out to two persons and thus their bona fide need has come to an end, therefore, decree cannot be granted in their favour.

5. The trial Court after appreciating oral and documentary evidence on record clearly came to the conclusion that the plaintiffs require the suit accommodation bona fide for expansion of their present business and in order to expand their business Tanishq Cloth Shop, only the common wall is required to be dismantled and then they can expand the business and therefore the suit accommodation is required bona fide for the plaintiffs and the alleged alternative accommodation is extended towards Kamla College then the staircase in between is required to be dismantled as such, the suit accommodation is required bona fide and they have no other alternative accommodation which the first appellate Court has affirmed.
6. In this appeal, the only question that has been raised is that the plaintiffs have alternative suitable accommodation which they have let out to Jitendra Sindhi and one another and those shops could have been used for their bona fide need. Admittedly, those shops which had fallen vacant were situated after the staircase for the first floor and the trial Court as well as the first appellate Court, upon appreciation of evidence, have clearly come to the conclusion that in order to expand their present shop only dismantling of a wall is required if the suit shop is vacated to the plaintiffs, whereas other three alternative shops are situated after the existing staircase for the first floor and it is practically impossible to dismantle the staircase, financially and practically it will not be viable for the

plaintiffs to do so and accordingly, granted decree in favour of the plaintiffs under Section 12(1)(f) of the Act of 1961 holding that those accommodations which were available cannot be used by the plaintiffs, as dismantling of the existing staircase for the first floor is not practically and economically viable for the plaintiffs.

7. It is well settled that the plaintiff landlord is the best judge to decide which accommodation is most suitable for his bona fide need and the court cannot dictate the landlord which shop he should use for expansion of his business, it is for the landlord to decide, particularly, in order to get his business expanded the existing staircase cannot be directed to be dismantled making the entire first floor of the plaintiffs' complex unusable.
8. The Supreme Court in the matter of Uday Shankar Upadhyay and others v. V. Naveen Maheshwari¹ has held that Court cannot dictate the landlord which floor he should use for his business, it is for the landlord to decide it.
9. Even otherwise, the question of bona fide need is merely a pure and simple question of law, it does not give rise to any substantial question. The two Courts have concurrently held that the plaintiffs have no other reasonably alternative suitable accommodation and the suit accommodation is only the shop adjoining to Tanishq Cloth Shop which is most suitable and required bona fide for the use of the plaintiffs. It is a finding of fact based on the evidence available on record. Even otherwise, the plaintiffs are not supposed to dismantle the staircase which is utilised as a way to access the first floor of the building as by removing the common wall between their

¹ 2010 (II) MPJR (SC) 161

existing shop – Tanishq Cloth Shop and the suit shop, if their shop can be expanded. As such, the finding of fact of the two Courts below that the suit shop is required bona fide for expansion of the plaintiffs' business is based on the evidence available on record, it is neither perverse nor contrary to record. I do not find any substantial question of law for determination. The appeal deserves to be and is hereby dismissed *in limine*, without notice to the other side. No order as to cost(s).

10. All the pending applications stand disposed of.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma