

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 31 of 2015

Reserved on : 16.08.2019

Delivered on : 04.10.2019

Gulam Rabbani, S/o Gulam Jilani, aged about 39 years, R/o Shop No. 5/11, Gurudwara Road, Supela Market, Bhilai, Tahsil & District- Durg (C.G.)

---- Appellant

Versus

Ramniwas Sharma, S/o Shri Ramlakhan Sharma, aged about 47 years, R/o 5/11 Gurudwara Road, Supela Market, Bhilai, Tahsil & District- Durg (C.G.)

---- Respondent

For Appellant	:	Mr. Manish Upadhyay, Advocate.
For Respondent	:	Mr. A.K. Prasad, 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 23.12.2014 passed by Second Additional District Judge, Durg (C.G.) in Civil Suit No. 21-A/2011, wherein the said court decreed the suit filed by the respondent/ plaintiff against the appellant/ defendant for eviction from rented shop, arrears of rent and compensation.
2. The appellant/ defendant is tenant in shop of the respondent/ landlord and appellant is paying rent of Shop No. 5/11 from 01.08.2004 situated at Gurudwara Road, Supela Market, Bhilai and paying rent @ Rs. 2500/- per month. After 11 months of tenancy, the rent is paid @

Rs. 3000/- per month and further a sum of Rs. 500/- for electricity charges. The respondent filed a suit against the appellant on the ground of arrears of rent and bonafide requirement of the shop for his business. It is alleged that the appellant is not paying the rent from September, 2006 onwards and the shop is required for his own business purpose. As per the appellant, he is paying rent regularly and there is no bonafide requirement of the shop and the respondent just wants to increase the rent amount for which the suit has been filed. The trial court after recording the evidence and hearing both sides, decreed the suit as mentioned above.

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

(i) The tenancy started from 01.08.2004 and it was upto 30.06.2005. The appellant has paid arrears of rent, therefore, eviction on the ground of non-payment of arrears of rent is not available in the present case.

(ii) As per evidence of Umesh Dewangan (DW-2) (Para 4), the respondent is having shop in first floor while the shop in question is in ground floor, therefore, the ground of bonafide requirement is not established.

(iii) The trial court has not evaluated the evidence in its true perspective, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondent submits as under:-

(i) The rent was not paid regularly by the appellant that is why a notice was served. The rent was not paid as per provisions of Section 12(i)(a) of the Chhattisgarh Accommodation Control Act, 1961 (for short "the Act, 1961"), therefore, the ground for eviction is available to the respondent.

(ii) The respondent is willing to start a shop for cooler ducting and other iron materials for which shop at ground floor is suitable and it cannot be compared with any other shop which is not suitable to the respondent.

(iii) The tenant cannot dictate to the landlord about suitability of shop for running his business.

5. Learned counsel for the respondent placed reliance in the matter of **Anil Bajaj & another Vs. Vinod Ahuja**, reported in **AIR 2014 SC 2294**.

6. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

7. First question for consideration before this Court is whether the ground for eviction is available to the respondent under Section 12(i) (a) of the Act, 1961, 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"

8. In the present case, a notice dated 08.04.2010 was served to the

appellant as per Ex.P/3. From the evidence, it is clear that the rent for the month of March, 2010 to June, 2010 was not paid that is why after marshalling the evidence, the trial court granted decree for arrears of rent. When notice is served to the appellant as per Ex.P/3, he was under obligation to pay arrears of rent within two months, but that is not done in the present case that is why the trial court decreed for the same on 23.12.2014, therefore, the case under Section 12(i)(a) of the Act, 1961 is made out against the appellant for his eviction.

9. Second question for consideration before this Court is whether the shop in question is required bonafidely for opening shop by the respondent for cooler ducting and other iron material. Learned counsel for the appellant submits that as per evidence of Umesh Dewangan (DW-2) (Para 4), one shop is available in first floor of the same premise while the shop in question is in ground floor, therefore, ground of bonafide requirement is not available.
10. Now the point for consideration before this Court is whether the tenant can dictate to the landlord as to which shop is suitable for him. As per law laid down in the matter of **Anil Bajaj** (supra), Hon'ble the Apex Court held that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. If the landlord intended to use the premise in question for his own business, no court or tenant can ration to his intention. The landlord is best judge to decide the suitability, therefore, the ground under Section 12(i)(f) of the Act, 1961 is also available to the respondent in the present case. The trial court has

elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to take a contrary view.

11. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellant and in favour of the respondent on the following terms and conditions:-

- (i) The appeal is dismissed with cost.
- (ii) The appellant to bear cost of the respondent throughout.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge