

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.604 of 2019**

1. Dilip Choudhary, S/o Late Harpal Das Choudhary, aged about 44 years,
2. Kamal Choudhary, S/o Late Harpal Das Choudhary,
Both R/o Near Shyam Talkies, Bilaspur, Tah. and Distt. Bilaspur (CG)

----Appellants/Defendants No.1(a) & 1(b)**Versus**

1. Shri Ram Mandir (Balkhandi Das Baba) Trust, Registered Trust, Through the then President Mulchand Khandelwal, R/o Khaparganj, Bilaspur, Tah. and Distt. Bilaspur

----Respondent/Plaintiff

2. Smt. Neetu Bachwani, W/o Deva Bachwani, aged about 35 years, R/o Sindhi Camp, Tilda, Distt. Raipur (CG)
3. Prachi Photani, D/o Late Harpal Das, aged about 32 years, R/o 301, Mount and Glory, Near I.T. Park, Kharadi, Pune (Maharashtra)
4. Kaushilya Choudhary, W/o Late Harpal Das Choudhary, aged about 70 years, R/o Qtr. No.B-38, Rama Green City, Khamtarai Road, Bilaspur, Distt. Bilaspur (CG)

---- Respondents

For Appellants/Def.No.1(a) & 1(b): Mr.Ravindra Agrawal,
Advocate

For Respondent No.1/Plaintiff : Mr.Rajeev Shrivastava,
Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

23/10/2019

1. Heard this second appeal on admission and formulation of substantial question of law preferred by the appellants/defendants No.1(a) & 1(b) under Section 100 of the CPC, by which the first appellate

Court has affirmed the judgment and decree of the trial Court granting decree for eviction against them and in favour of respondent NO.1/plaintiff trust.

2. Mr.Ravindra Agrawal, learned counsel for the appellants/defendants No.1(a) and 1(b), would raise three fold submissions for admission of appeal by formulating substantial question of law:-

(i) That, the respondent/plaintiff trust has failed to plead and establish that he is entitled to claim benefit under notification dated 7.9.1989 issued under Section 3(2) Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as "the Act of 1961")

(ii) That, at the time of evidence Mulchand Khandelwal was representing the respondent/plaintiff, but he did not examine himself to support the plaint averment, but one Shekhar Mudliyar (PW-1) was examined to prove the contents of the plaint, as such, contents of the plaint are not proved by examining Shekhar Mudliyar, plaintiff witness.

(iii) That, tenancy of the appellants/defendants was terminated vide Ex.P-1 w.e.f. 31.12.1995 but the rent was claimed w.e.f. January, 1993, as such, there is waiver of notice under Section 113 of the Transfer of Property Act, 1882 (hereinafter

called as "TP Act").

3. I have heard learned counsel for the appellants/defendants No.1(a) and 1(b), considered his submissions and went through the records with utmost circumspection.
4. The plaintiff-trust filed a suit for eviction of the original defendant-Harpal Das stating inter-alia that defendant is its tenant on a monthly rent of ₹ 150/- commencing the 1st day of English calendar month, but he has not paid rent from April, 1993 and the suit accommodation is required *bona fide* for religious and charitable purpose of the trust and said suit was filed after terminating the tenancy in view of the provisions contained in Section 106 of the TP Act w.e.f. 31.12.1995, in which the defendant contested the suit stating that the suit as framed and filed is not maintainable and the suit accommodation is not required *bona fide* by the plaintiff-trust, as such, the suit be dismissed.
5. The trial Court after appreciating oral and documentary evidence available on record came to the specific conclusion that the present suit is covered by notification dated 7.9.1989 issued under Section 3(2) of the Act of 1961 and thereby exempted the

properties of the trust under the provisions of the Act of 1961 for educational, religious and charitable purpose of the trust and is not obliged to prove that the properties of the trust were being utilized for religious and charitable purpose of the trust and thereby the plaintiff trust is entitled for notification dated 7.9.89 and thereby the plaintiff trust is exempted from establishing ground under Section 12(1) of the Act of 1961.

6. The constitutional validity of notification dated 7.9.1989 was upheld by the Supreme Court in the matter of Betibai and others v. Nathooram and others¹ and thereafter again in the matter of Ramgopal and another v. Balaji Mandir Trust and others² it has been held that a registered institution registered under the provisions of the Public Trust Act, 1951 is entitled for eviction without taking recourse to grounds under Section 12(1) of the Madhya Pradesh Accommodation Control Act, 1961.
7. In the Madhya Pradesh High Court, there was conflict of opinion whether in each and every case a registered religious charitable public trust is obliged to prove that its income is being utilized

1 (1999) 6 SCC 368

2 (2003) 5 SCC 17

for religious and charitable purpose of the trust and the finding conflict with decision in case of Boolchand Vs. Atal Ram Sindhi Dharamshala Trust³, and Reg. Vidhichand Dharamshala Trust through it's President and Trustee Omprakash Garg Vs. Shyam Singh and others⁴, the matter was referred to the Division Bench in case of Scindia Devasthan, Regd. Charitable Trust Vs. Praveen Kumar Nigam and others⁵, on the following question of law:-

"Whether in each and every case a registered religious charitable public trust is obliged to prove that it's income is being utilized in religious and charitable purpose of the Trust?"

8. Resolving the conflict, the Division Bench of Madhya Pradesh High Court in case of Scindia Devasthan, Regd. Charitable Trust (supra), held as under:-

"31. In the aforesaid decision of the Division Bench, it was held that 'Finality in litigation and public policy both require that a litigant should not be permitted to challenge validity of the provisions of the Act or notification at different times on different grounds. Once the notification has been considered by the Supreme Court and the validity of the same was upheld it must be presumed that all grounds which could validly be raised were raised and considered by the Court and the decision would be binding under Article 141 of the Constitution'. It was further held that the law laid down by the Apex Court is binding on all

3 (1998(1) MPWN 113

4 2010(3) MPLJ 428

5 2014(1) MPJR 20

notwithstanding the fact that it is against or in favour of the party and it is binding on even those who were not parties before the Court. It is also held that once an authority of law is laid down it is no longer open to re-canvass the same on new grounds or reasons that may be put forth in its support. Every new discovery or argumentative novelty cannot undo a binding precedent. It does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned. It was held that the law which has been declared by the Apex Court under Article 141 of the Constitution is binding. It can only be substituted or clarified or reconsidered by the Supreme Court and not by this Court on the doctrine of per incuriam and sub-silentio, which are in the nature of exceptions to the rule of precedent in relation to law declared under Article 141 of the Constitution. Thus, in such premises also, by giving any further interpretation to the above mentioned decisions of the Supreme Court the public trust could not be directed to prove in each case that its received income is being utilised for the object and purpose of the trust.

32. In view of the aforesaid discussion our answer on the question referred is:-- 'that in each and every case a registered religious and charitable public trust is not obliged to prove that its income is being utilised in religious and charitable purpose of the trust'. Accordingly, after such answer of the question referred, the Registry is directed to place this matter before the Single Bench for further hearing and adjudications of these appeals on merits."

9. The Madhya Pradesh Accommodation Control Act, 1961 was in force in the State of Madhya Pradesh and upon formation of new State of Chhattisgarh w.e.f.

01/01/2000, it has also been made applicable to the State of Chhattisgarh and there is no legislative change in Section 3(2) of the Act of 1961 in the State of Chhattisgarh. Thus, the decision of the Division Bench in Scindia Devsthan, Redg. Charitable Trust (supra) squarely applies to the facts of the present case against appellant/defendant and it cannot be held that the plaintiff/trust is obliged to prove that.

10. It is not in dispute that the provision contained in the Act of 1961 was applicable to the suit accommodation and the suit property being exempted by notification dated 7.9.1989 and therefore, the plaintiff-trust was not required to establish the ground under Section 12 of the Act of 1961, therefore, no such substantial question of law is involved in this appeal.

11. The Constitution Bench of the Supreme Court in the matter of V. Dhanapal Chettair v. Yesodai Ammal⁶ has held that a notice to quit under Section 106 of the TP Act is not a necessary prerequisite for an eviction petition under any of the State Rent Acts and such notice is a mere surplusage.

⁶ (1979) 4 SCC 214

12. Submission of learned counsel for the appellants/defendants No.1(a) and (b) is that tenancy was terminated w.e.f. 31.12.1995 (Ex.P-1) and still rent was claimed w.e.f. January, 1993 and that was granted, is of no help to him in light of principle of law laid down by the Supreme Court in V. Dhanapal Chettair (supra) and in my considered opinion, this will not give rise to substantial question of law on which the appeal can be admitted particularly also in view of fact that no such plea was ever taken by the defendants/appellants either before the trial Court or before the first appellate Court.
13. Next submission of learned counsel for the appellants/defendants is that neither the person who signed the plaint nor the present President of the trust was examined to prove the contents of the plaint and only Shekhar Mudliyar was examined, therefore, no decree for eviction could have been passed in favour of the plaintiff-trust.
14. The first appellate Court has clearly held that Shekhar Mudliyar is also trustee and having complete information and it is for the plaintiff to examine the witness who is competent to depose on behalf of

the trust. Therefore, non-examination of the former President or present President of trust, it cannot be held that the plaintiff has failed to prove his case. Above-stated finding of fact is based on evidence available on record, in which I do not find any perversity or illegality much less substantial question of law for determination.

15. Mr.Rajeev Shrivastava, learned counsel appearing for the respondent No.1/plaintiff, on advance copy, has brought to notice of this Court that this Court has dismissed Second Appeal No.492 of 2018 on 27.8.2018 and Second Appeal No.415 of 2018 on 29.8.2018, which are connected matters, granting decree filed by the plaintiff trust against similarly situated tenants that on identical fact situation and SLP filed against one of the appeals (Second Appeal No.415/2018) being Special Leave to Appeal (C) No.31564/2018 (Prakash Chand Gujrati v. Ram Mandir (Balkhandidas Baba) Trust has already been dismissed by the Hon'ble Supreme Court on 7.12.2018. Statement of Mr.Rajeev Shrivastava is placed on record.

17. In view of above, I do not find any ground for formulating substantial question of law for determination of this second appeal. Accordingly,

the second appeal deserves to be and is hereby dismissed in *limine* without notice to other side. No cost(s).

18. At this stage, Mr.Ravindra Agrawal, learned counsel for the appellants, would submit that the appellants may be granted sometime to vacate the suit accommodation and to make alternative arrangement as they are continuing their shop for 50-60 years. Mr.Rajeev Shrivastava submits that the appellants may be restrained from transferring peaceful possession of the suit accommodation to any one and no third party interest shall be created.
20. On due consideration, time to vacate the suit premises till 31st January, 2020 is granted to the appellants, subject to furnishing undertaking with affidavit on or before 22nd November, 2019 before the Executing Court that the appellants will deliver vacant possession of the suit accommodation to the respondent NO.1 herein/plaintiff on or before 31st January, 2020 and shall not create third party interest in between and will not deliver possession of the said accommodation to any one except plaintiff trust and further that they will pay all arrears of rent/damages upto 31.1.2020 by

30.11.2019. If undertaking/affidavit is not furnished on or before 22nd November, 2019 before the Executing Court, this portion of order shall stand dissolved.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-