

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.620 of 2019Order reserved on: 16-12-2019Order delivered on: 20-12-2019

Dr. Chandrashekher Malhotra, S/o Late Dr. Indrasen Malhotra, aged about 62 years, Present R/o Radhika Nagar, Bhilai, Tehsil & District Durg (C.G.)

---- Appellant

Versus

1. Pravin Chand, S/o Late Prem Chand Surana, aged about 53 years,
2. Sunil Kumar @ Tikam Chand Surana, S/o Late Prem Chand Surana, aged about 52 years,
3. Anil Kumar @ Gulab Chand Surana, S/o Late Prem Chand Surana, aged about 50 years,

All are R/o Surana Bhawan, Jawahar Chowk, Durg, Tehsil & District Durg (C.G.)

(Plaintiffs)

---- Respondents

For Appellant: Mr. Goutam Khetrapal and Mr. Avinash Chand Sahu, Advocates.

For Respondents: -

Mr. Anand Dadariya and Mr. Ashish Surana, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the defendant questioning the judgment and decree dated 13-5-2019 passed by the 2nd Additional District Judge, Durg in Civil Appeal No.55-A/2016 by which the first appellate Court has affirmed the judgment & decree dated 3-8-2016 passed by the 1st Civil Judge,

Class-II, Durg in Civil Suit No.15-A/ 2010, decreeing the suit and directing eviction of the defendant from the suit accommodation.

2. Mr. Goutam Khetrapal, learned counsel appearing for the appellant / defendant, would submit that both the Courts below are absolutely unjustified in decreeing the suit in favour of the plaintiffs by not holding that the plaintiffs have reasonably alternative suit accommodation in their possession which they have received on 31-3-2009 and on further dates as such, the finding recorded by the two Courts below that the plaintiffs have no reasonably alternative suit accommodation {second limb of Section 12(1)(f) of the Chhattisgarh Accommodation Control Act, 1961 (for short, 'the Act of 1961')} is perverse and therefore the appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

3. The respondents herein / plaintiffs filed suit for eviction basically on the ground enumerated in Section 12(1)(f) of the Act of 1961 stating inter alia that the suit shops owned by the plaintiffs are situated at Jawahar Chowk, Durg (described in map as स, द, फ, क; the original tenant was Dr. Indrasen Malhotra on rent at the rate of ₹ 625/- per month; the suit accommodation is bona fide required for the bona fide use of plaintiff No.2 Sunil for opening a ready-made garment shop in the suit shop and in the

adjacent vacant shop (earlier tenant Sunderlal Tamrakar) after removal of partition wall; plaintiff No.3 Anil has started the business of Provisional and Departmental Store in other three shops, out of which possession of one shop has been received on 31-3-2009; and plaintiff No.3 is running business in the name of Surana Traders in those vacant shops.

4. The defendant by filing written statement opposed the grounds stating that the plaintiffs have reasonably alternative suit accommodation in the township of Durg, as the shops have fallen vacant and are in possession of the plaintiffs, but they are not using the same and the suit shops and the shop vacated by Sunderlal Tamrakar is not part of same building; the plaintiffs have no bona fide need, as no business is being run by plaintiff No.2 in the shop vacated by Sunderlal Tamrakar and in three vacant other shops; and partition between two shops cannot be removed.
5. The trial Court after appreciating oral and documentary evidence available on record, decreed the suit that the plaintiffs are in bona fide need and the suit accommodation is required bona fidely and plaintiff No.2 has no other alternative accommodation in the township of Durg and three other shops with additional adjacent shop vacated by Sunderlal Tamrakar were found to be used and got vacated for plaintiff No.3, which has been affirmed by the first appellate Court. The first appellate Court has

rejected the challenge made with regard to bona fide need and availability of three shops.

6. The main contention of the defendant is that the plaintiffs have three other shops in their possession by which their bona need is satisfied. The trial Court has specifically framed issue No.6 as to whether the need of the plaintiffs is satisfied after having obtained possession from other tenant Sunderlal Tamrakar and after detailed discussion recorded finding in issue No.6 that the need is not satisfied, as the plaintiffs wanted to start ladies & gents garments shop after vacating the suit shops and the shop vacated by Sunderlal Tamrakar by combining both the rooms by dismantling the common wall, need of the plaintiffs would be satisfied. The same has been affirmed by the first appellate Court by a detailed and reasoned judgment.
7. It is the settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter, the tenant cannot dictate in this regard.
8. The Supreme Court in the matter of **Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta**¹ has analysed the concept of *bona fide* requirement and held that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to

¹ (1999) 6 SCC 222

a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself – whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide.

9. In the matter of Ragavendra Kumar v. Firm Prem Machinery & Co.², the Supreme Court has held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter.
10. In the matter of Prativa Devi v. T.V. Krishnan³, it was held by the Supreme Court that the landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and in what manner he should live. The *bona fide* personal need is a question of fact and should not be normally interfered with.
11. The Supreme Court in the matter of Anil Bajaj and another v. Vinod Ahuja⁴ repelling the argument with regard to availability of reasonably alternative accommodation, Their Lordships held that it is not for the tenant to dictate to the landlord as to how

2 (2000) 1 SCC 679

3 (1996) 5 SCC 353

4 (2014) 15 SCC 610

the property belonging to the landlord should be utilised by him for the purpose of his business. It was observed as under: -

"6. ... What the tenant contends is that the landlord has several other shop houses from which he is carrying on different businesses and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilised by him for the purpose of his business. ..."

12. The Madhya Pradesh High Court in the matter of **Noor Mohammad v. Murlidhar**⁵ has held that tenanted non-residential accommodation situated on main road are more suitable for starting business as compared to alternative accommodation situate on the side road, tenanted accommodation cannot be refused to landlord on the ground of availability of alternative accommodation.

13. In the matter of **Akhileshwar Kumar and others v. Mustaqim and others**⁶ the Supreme Court has held that choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot thrust upon its own choice on the needy.

14. Likewise, in the matter of **Uday Shankar Upadhyay and Ors. v. Naveen Maheshwari**⁷ dealing with *bona fide* need

5 AIR 1985 Madhya Pradesh 260

6 2002 AIR SCW 5160

7 2010 AIR SCW 1265

under Section 12(1)(f) of the Act of 1961, the Supreme Court held as under:-

"11. In our opinion, once it is not disputed that the landlord is in *bona fide* need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well-known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the Courts below that the sons of plaintiff No.1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained."

15. In the matter of Ahmad alias Mohd. Ahmad v. Mohd

Osman⁸ the Supreme Court declined to interfere with the concurrent finding recorded by the Courts below.

16. The Supreme Court in the matter of Ram Prasad Rajak

v. Nand Kumar and Bros. and another⁹ has held that the *bona fide* requirement of the appellant therein / landlord does not give rise to any substantial question of law, it is entirely a matter to be decided on an appreciation of evidence and set-aside the judgment of the High Court which has interfered with the judgment & decree of the 2nd Additional District Judge, Giridih in the first appeal holding that the High Court has acted beyond its jurisdiction in appreciating the evidence on record interdicting the finding of *bona fide* need.

8 (2017) 13 SCC 252

9 AIR 1998 SC 2730

17. Very recently and finally as well, in the matter of Gandhe Vijay Kumar v. Mulji alias Mulchand¹⁰, the Supreme Court has held that the *bona fide* requirement concurrently found by the Rent Controller as well as by the appellate authority, the High Court should not have ventured to look into evidence as if in a first appeal and entered a different finding, and interfered with the order of the High Court and held as under: -

"3. There is no dispute with respect to the landlord-tenant relationship. The *bona fide* requirement also has been concurrently found by the Rent Controller as well as by the appellate authority. The High Court should not have ventured to look into the evidence as if in a first appeal and entered a different finding, though another finding might also be possible. Merely because another view is possible in exercise of the revisional jurisdiction, the High Court cannot upset the factual findings."

18. Reverting to the facts of the present case and taking into consideration oral and documentary evidence on record, the finding recorded by the two Courts below holding that the plaintiffs have no reasonably alternative suitable accommodation of their own in the township of Durg, is a finding of fact based on the evidence available on record. The defendant has miserably failed to establish and demonstrate that the plaintiffs have any reasonably suitable accommodation in their possession for starting / continuing their business for their *bona fide* need. The concurrent finding recorded by the two Courts

10 (2018) 12 SCC 576

below is neither perverse nor shown to be contrary to record warranting interference under Section 100 of the CPC. I do not find any illegality or perversity in the judgment and decree passed by the first appellate Court and as such, both the Courts below are absolutely justified in granting decree in favour of the plaintiffs.

19. As a fallout and consequence of above-stated discussion, the second appeal being merit-less and substance-less deserves to be and is accordingly dismissed *in limine*, directing the defendant to bear his own cost and cost of the plaintiffs as well.

Sd/-
(Sanjay K. Agrawal)
Judge