

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Order Reserved on 08.04.2021****Order Delivered on 12.04.2021****Writ Petition (227) No.278 of 2020**

Smt. Sangeeta Agrawal W/o Dr. Vijay Kumar Agrawal, Aged About 63 Years, R/o Champa Near Nagar Panchayat Office, Tahsil Champa, District Janjgir-Champa, Chhattisgarh.

---- Petitioner**Versus**

Narayan Rai S/o Shri Nawal Singh Rai, Aged About 54 Years, R/o New Ruchi Restaurant, Gandhi Chowk, Bihari Talkies Road, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh.

---- Respondent

For Petitioner	: Shri K.A. Ansari, Senior Advocate with Shri Aman Ansari, Advocate
For Respondent	: Shri Vijay K. Deshmukh, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C A V Order****Per Parth Prateem Sahu, Judge**

1. Challenge in this writ petition is to the order dated 06.02.2020 passed by Chhattisgarh Rent Control Tribunal, Raipur (hereinafter referred to as 'Tribunal') in Appeal No.29-A/2019 whereby the Tribunal dismissed the application for vacating the stay order dated 29.07.2019 and application for dismissal of appeal itself for non-payment of rent.

2. Facts necessary for disposal of this writ petition, are that, petitioner is landlord of a double-story building situated at Gandhi Chowk, Bihari Talkies Road, Ward No.31, Bilaspur District Bilaspur.

Ground floor of accommodation was given on rent to the respondent/tenant for running business of Restaurant on a monthly rent of Rs.7,000/-. The petitioner/landlord after lapse of sometime asked the respondent/tenant to vacate the premise for his personal need (i.e. for opening of business of paint shop for her elder son Avinash Agrawal in ground floor and clinic for the younger son (Doctor) in first floor), but, when request did not yield any result, petitioner/landlord filed an application for eviction before the Rent Controlling Authority, Bilaspur (hereinafter referred to as 'RCA'). The RCA after hearing both the parties, allowed the application, passed an order of eviction on 19.06.2019 against the respondent/tenant. The respondent/tenant challenged the order of eviction passed by RCA before the Rent Controlling Tribunal along with an application of stay. Tribunal passed an order of stay in favour of respondent therein on 19.07.2019. Thereafter, petitioner/landlord moved an application for vacating of stay order dated 29.07.2019 (Annexure P/2) stating therein that respondent/tenant has not deposited rent from the date of filing application for eviction and obtained interim order of stay. He also filed another application for dismissal of appeal itself on the ground of non-payment of regular rent on 15th of each month. The Tribunal heard both the applications and decided the same on 06.02.2020, dismissed the same to be infructuous as the respondent/tenant has deposited entire rent upto January 2020. This made the petitioner/landlord to approach this Court by filing instant writ petition.

3. Shri K. A. Ansari, learned senior counsel for the

petitioner/landlord submits that respondent/tenant has not deposited the rent during the pendency of application for eviction under Clause 11 of Schedule 2 of the Chhattisgarh Rent Control Act, 2011 (hereinafter referred to as 'Act of 2011'). He further submits that respondent/tenant even at the time of filing of appeal, has not deposited the arrears of rent, hence, Tribunal ought not to have allowed the application for grant of stay filed by the tenant along with appeal. Even after passing of interim order of stay, respondent/tenant has not deposited the rent till December 2019. Respondent/tenant has deposited the arrears of rent after filing of application for vacating of stay order and to dismiss appeal. The Tribunal has not taken into consideration the provisions of Section 12(6) of the Act of 2011. It is contended that respondent/tenant is having an obligation to pay the security deposit rent and other dues fully and regularly in the manner settled by landlord under Clause 8 of Schedule 4. He pointed out that sub-section (6) of Section 12 of the Act of 2011 provides for punishment in denying the rights of the landlord by tenant. The respondent/tenant is a habitual defaulter, hence, he is not entitled for protection. More so, when the petitioner/landlord has sought for eviction for her own use. He submits that taking into consideration the entire facts of the case and the act of the respondent/tenant, not only the order of stay should be vacated, but appeal filed by respondent/tenant itself to be dismissed.

4. Shri Vijay K. Deshmukh, learned counsel for the respondent/tenant submits that respondent/tenant has paid entire

amount of arrears of rent through cheque and when it is brought to the knowledge of respondent/tenant about some mistake in cheque, respondent/tenant has deposited the entire amount and submitted receipt before the Tribunal. He further submits that application for dismissal of appeal itself has rightly been rejected. The appeal is to be heard on its merits and Tribunal considering the submission made by respondent/tenant during the course of hearing of application for vacation of stay, upon considering the facts and reasons projected, recorded a finding that on the date of hearing of application, arrears of rent has already been paid. The Tribunal has correctly exercised its jurisdiction within the law. It is contended that other arrears of rent of Rs.84,000/- is due because of COVID-19 pandemic situation. The business of running a restaurant is only source of income of respondent/tenant and respondent/tenant will regularly deposit the rent in future. He further submitted that respondent/tenant wants to pay arrears of rent of Rs.84,000/- through demand draft, which is placed on record along with covering memo filed today.

5. We have heard learned counsel for the parties.

6. The present writ petition has been filed only against the interim order passed by Tribunal, whereby Tribunal has dismissed the application for vacating the stay order dated 29.07.2019 on the ground of non-payment of rent and application for dismissal of appeal itself on the same ground.

7. We have gone through the provisions referred to by the

learned senior counsel during the course of argument. Section 12(6) of the Act of 2011 provides for punishment if tenant undermines or deny to the landlord the rights available to him in terms of Schedule 2. Schedule 4 talks about the obligation of the tenant under the Act of 2011 and Clause 8 prescribes for the payment of rent and other dues fully and regularly in the manner settled by tenant to landlord.

8. Learned counsel for the petitioner/landlord could not able to point out any provision under the Act of 2011, that if there is arrears of rent on the date of filing of appeal then the appeal itself could not be heard on merits.

9. In view of above, we do not find any jurisdictional error in passing of the impugned order dated 06.02.2020. This petition is filed under Article 227 of the Constitution of India under supervisory jurisdiction. Impugned order would show that Tribunal has reserved the right of petitioner/landlord to file an application for vacation of stay in future. During the pendency of petition, we have directed the respondent/tenant to file an affidavit before this Court as to the details of rent paid by them and the particulars as to the amounts due and to file relevant supporting documents vide order dated 22.03.2021. In pursuance to the order passed by this Court, respondent/tenant filed an affidavit mentioning therein that there was arrears of rent till March 2021, for which, he is submitting cheque dated 05.03.2021 amounting to Rs.84,000/-. Perusal of affidavit filed by respondent/tenant would show that as per their own say, respondent/tenant has not deposited the rent for last one year,

which shows that respondent/tenant is in habit of making default. Non-payment of rent is one of the grounds mentioned under Clause 11 of Schedule 2. Habitual defaulter is also defined under Section 2(4) of the Act of 2011.

10. As in the impugned order itself, Tribunal has granted liberty to petitioner/landlord to file an application for vacating of the stay in future, respondent/tenant has not deposited entire rent. In view of aforementioned facts and circumstances of the case, petitioner/landlord can very well file fresh application showing subsequent default in payment of rent, if so desired, for vacating of stay before the Tribunal raising all the grounds therein and if any such application is filed by the petitioner/landlord, the Tribunal shall decide the same keeping in mind the provisions of the Act of 2011 within a period of 'four weeks' from the date of filing of such application. It is made clear acceptance of rent now will not extinguish the right of the petitioner from raising a ground of habitual defaulter, because it has to be consider as on the date default was committed.

11. Taking note of the fact that the order of eviction is dated 19.06.2019 and appeal is pending since July 2019, we find it appropriate to direct the Tribunal to decide the appeal within a period of 'two months' from the date of receipt of copy of this order.

12. In view of above, the writ petition stands disposed of.

13. Respondent/tenant has filed demand draft of Rs.84,000/- towards arrears of rent vide covering memo dated 08.04.2021 in

original before this Court. As the above demand draft is towards the arrears of rent, it is ordered that, if the petitioner/landlord appears to accept the demand draft through her Advocate, the same shall be handed over to them after taking acknowledgement of receipt of demand draft after keeping copy of the same in record.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh