

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 248 of 2011**

Ram Kumar Kashyap, Aged 45 years, S/o Shambhu Prasad Kashyap, R/o Opposite to Raja Hotel, Bus Stand, Agrasen Chowk, Bilaspur, Chhattisgarh.

---Appellant/Plaintiff

Versus

Kishore Desai, Aged 55 years, Proprietor Kishore Traders, Bus Stand, Opposite to Raja Hotel, Agrasen Chowk Road, Bilaspur, Tahsil and Distt. Bilaspur, Chhattisgarh.

--- Respondent/Defendant

For Appellant :- Mr. B.P. Gupta, Advocate

For Respondent :- None

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

12/08/2021

1. This second appeal preferred by the appellant/plaintiff was admitted for hearing on 09/02/2021 by formulating the following substantial question of law :-

"Whether the First Appellate Court is justified in reversing the judgment and decree of the Trial Court passed under Section 12(1)(f) of the Accommodation Control Act, 1961 by recording a finding perverse to the record ?"

[The parties will hereinafter be referred to as per their status given and ranking shown before the trial Court.]

2. Plaintiff, being the owner and landlord of suit shop situated at Agrasen Chowk, Bilaspur measuring 9 x 22 sq. ft., let out the suit shop to the defendant for monthly rent of Rs. 930/- for the purpose of godown for which the defendant was paying rent from December, 2005. It was pleaded by the plaintiff that the suit shop is required for his and his son's bona fide need for the purpose of carrying out their business and they have no alternative accommodation in the township of Bilaspur to fulfill their need and at present plaintiff is carrying out his business of selling vegetables from a temporary shop in front of his house which is being dismantled from time to time by the Municipal Corporation, as such, suit shop is required under Section 12(1)(f) of Chhattisgarh Accommodation Control Act, 1961 (hereinafter, the Act of 1961) therefore, notice was served to the defendant on 21/12/2006, but despite service of said notice, defendant has not vacated the

suit shop, as such, decree for eviction be granted in favour of the plaintiff.

3. Resisting the suit, defendant filed his written statement and admitted the fact of tenancy over the suit shop on rent of Rs. 930/- per month. He also admitted that plaintiff has been carrying out his business of selling vegetables from a shop in front of his house for the last 20 years, as such, he has no bona fide need for the suit shop and the instant suit is liable to be dismissed.
4. Learned trial Court, after appreciating the oral and documentary evidence on record, vide judgment and decree dated 02/01/2009, decreed the suit holding that defendant is tenant of plaintiff over the suit shop on monthly rent of Rs. 930/- and the suit shop is required for the bona fide need of plaintiff and his son and they have no alternative accommodation in the township of Bilaspur to fulfill their need, as such, he is entitled for decree for eviction. On appeal being preferred, learned first appellate Court, vide impugned judgment and decree dated 27/01/2011, though held that defendant is tenant of plaintiff but further held that plaintiff has

another suitable accommodation in his possession in the township of Bilaspur and as such, reversed the decree passed by the trial Court against which this second appeal under Section 100 of CPC has been preferred by the appellant/plaintiff in which substantial question of law has been framed and set out in the opening paragraph of this judgment.

5. Mr. B.P. Gupta, learned counsel for the appellant/plaintiff, would submit that the first appellate Court has gravely erred in holding that plaintiff has alternative suitable accommodation in the township of Bilaspur as pursuant to the decree of eviction passed in Civil Suit No. 13A/2008 on 15/07/2008 plaintiff has come in possession of one shop vacated by Narvinder Singh whereas in the written statement, there is no such pleading of the civil suit and even in his statement before the trial Court, defendant has clearly admitted in paragraph 20 that plaintiff has not received the vacant possession of the shop pursuant to the decree of eviction, as such, the impugned judgment and decree passed by the first appellate Court is liable to be set aside.

6. None appeared for respondent though served.
7. I have heard learned counsel for the appellant, considered his submission and went through the records with utmost circumspection.
8. Learned trial Court has clearly held that defendant is the tenant of plaintiff over the suit shop on monthly rent of Rs. 930/-. It was further held by the trial Court that plaintiff is carrying out his business of selling vegetables from a temporary shop in front of his house and the suit shop is required for his and his son's bona fide need and he has no other alternative accommodation in the township of Bilaspur to fulfill his need, therefore, he is entitled for decree under Section 12(1)(f) of the Act of 1961, which was reversed by the first appellate Court only on the ground that plaintiff has got the possession of the adjacent shop from the suit shop pursuant to the decree of eviction against Narvinder Singh in Civil Suit No. 13A/2008.
9. Mr. B.P. Gupta, learned counsel for the appellant/plaintiff, has drawn my attention to the written statement which goes to show that no

such pleading of there being a suitable alternative accommodation in the township of Bilaspur in possession of plaintiff has been taken by the defendant in the written statement so filed. Even otherwise, defendant in his statement before the trial Court has clearly admitted in paragraph 20 that plaintiff has not received the vacant possession of the shop pursuant to the decree of eviction passed in his favour against Narvinder Singh in Civil Suit No. 13A/2008. As such, the first appellate Court has clearly erred in holding that plaintiff has suitable alternative accommodation in his possession in the township of Bilaspur for fulfilling his and his son's bona fide need.

10. It is well settled law that if it is a case of the defendant that plaintiff has alternative suitable accommodation in his possession for his bona fide need, it must be clearly pleaded in the written statement and must be proved in accordance with law before the trial Court and must be established by leading appropriate evidence and in absence of pleading and evidence, it cannot be held that plaintiff has alternative suitable accommodation for their

bona fide need in the township of Bilaspur. Thus, the first appellate Court is absolutely unjustified in setting aside the decree of eviction granted by the trial Court under Section 12(1)(f) of the Act of 1961 in favour of plaintiff. Accordingly, the judgment and decree of the first appellate Court, being perverse and contrary to the record, is hereby set aside and that of the trial Court is restored.

11. The second appeal is allowed to the extent indicated herein-above. No cost(s).

12. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet