

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 260 of 2009****Reserved on 23.02.2021****Pronounced on 05.03.2021**

- P. Reddeyya S/o Late P. Shastranu aged about 66 years, Caste Bramhan (retired teacher) R/o Rajendra Nagar Ward, Jagdalpur, District Bastar (C.G.)

---- Appellant**Versus**

- Ramchandra Rath Aged About 63 Years S/o Late Govind Rath R/o Bhairamdev Ward, (presently at Shiv Mandir Ward), Jagdalpur, District Bastar (C.G.)

---- Respondent

For Appellant:	Shri Sourabh Sharma, Advocate.
For Respondent:	Shri Manoj Paranjpe, Advocate appears along with Shri Anurag Singh, Advocate and Shri Shubhank Tiwari, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**CAV Order/Judgment**

1. This appeal has been preferred by the Defendant under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') questioning the legality and propriety of the judgment and decree dated 29.04.2009 passed by the District Judge, Bastar, Place Jagdalpur in Civil Appeal No.11-A/2008, whereby, the lower appellate Court, while affirming the judgment and decree dated 02.09.2008 passed by First Civil Judge, Class I, Jagdalpur in Civil Suit No.1A/2005 has dismissed the defendant's appeal. The parties to this appeal shall be referred hereinafter as per their description in the trial Court.

2. Briefly stated the facts of the case are that plaintiff -Ramchandra Rath instituted a suit claiming decree for eviction of the defendant - P.

Reddeyya on the grounds enumerated under Section 12(1)(e) and (g) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter referred to as the 'Act, 1961') by submitting *inter alia* that the defendant was put in possession of the suit house situated at Rajendra Nagar, Jagdalpur as described in red colour marked as "ABCD" in plaint Schedule "A" at the monthly rent of Rs.500/-, which was enhanced subsequently to the tune of Rs.800/- per month in the year 2000. It is alleged in the plaint that the defendant has stopped paying rent to him since October, 2001 and has failed to deposit the arrears of rent of Rs.19,200/- despite requests being made in this regard. Further contention of the plaintiff is that the suit house is in dilapidated condition and not safe for human habitation and pleaded further that it requires bona fide for residential purposes of his family members and suitable and alternative accommodation for the said purpose is not available to him in the concerned city.

3. While contesting the aforesaid claim, it is pleaded by the defendant that the condition of the suit house is neither dilapidated as alleged by the plaintiff nor was it required bona fide by him as he is trying to alienate the same to someone else. The claim is, therefore, liable to be dismissed.

4. The trial Court, after considering the evidence led by the parties, arrived at a conclusion that the defendant, who is occupying the suit house at monthly rent of Rs.800/-, has failed to deposit the same since October, 2001 and the plaintiff is, therefore, entitled to get the arrears of rent of Rs.19,200/-. It held further, while considering the notice dated 03.02.2007 (Ex.P.10) issued by the Municipal Corporation, Jagdalpur to the plaintiff, that the condition of the suit house is dilapidated and is unsafe for human habitation and held further that it requires bona fide by the plaintiff for the

residential purposes of his family members. In consequence, decreed the claim on the grounds under Section 12(1)(e) & (g) of the Act, 1961.

5. Being aggrieved, the defendant has preferred an appeal and the lower appellate Court, while meeting its reasonings only with regard to some of the issues, like Issue Nos.3 and 7 to 9 framed by the trial Court, has affirmed the decree for eviction on the ground under Section 12(1)(e) and (g) of the Act, 1961. This is the order which has been questioned by way of this appeal and the appeal is admitted on the following substantial question of law:-

“Whether the court below was justified in not considering the submissions made by the appellant in respect of the contentions pertaining to 12(1)(e) and (g) of the Chhattisgarh Accommodation Control Act, 1961?”

6. According to learned counsel for the Appellant/defendant, the finding of the lower appellate Court affirming the decree for eviction on the grounds enumerated under Section 12(1)(e) and (g) of the Act, 1961 even without meeting its reasonings with regard to the issues No. 2, 4 & 5 framed by the trial Court, is apparently contrary to law. It is contended further that entire judgment and decree of the trial Court was under challenge in appeal, therefore, it was the bounden duty of the Court below to decide the appeal on all the issues framed by the trial Court. Having failed to do so, the Court below has committed an illegality in affirming the eviction decree as passed by the trial Court.

7. On the other hand, learned counsel appearing for the respondent/plaintiff, while supporting the judgment and decree as passed by the Court below, contended that the substantial question of law as framed does not arise for the determination, and the appeal, therefore,

deserves to be dismissed.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. From perusal of the record, it appears that a suit for eviction was made by the plaintiff on the grounds enumerated under Section 12(1)(e) and (g) of the Act, 1961. According to the plaintiff, the condition of the suit house is in dilapidated condition and unsafe for human habitation and, it requires bona fide by him for the residential purposes of his family members. The claim was denied by the defendant by submitting *inter alia*, that the condition of the suit house was neither in dilapidated condition nor was it required bona fide by the plaintiff for his alleged need.

10. Based upon the aforesaid pleadings, the trial Court has framed as many as 10 issues and, issues No. 2, 4 & 5 were framed in order to ascertain the fact as to whether it requires bona fide by the plaintiff for his alleged need and/or, whether the condition of the suit house is in dilapidated condition or not?

11. After considering the evidence led by the parties, it was held by the trial Court that the condition of the suit house is in dilapidated condition and not safe for human habitation. It held further that the plaintiff requires the suit house bona fide for the residential purposes of his family members and, accordingly decreed the suit on the grounds under Section 12(1)(e) and (g) of the Act, 1961. The finding so recorded by the trial Court has been affirmed further by the lower appellate Court vide its impugned judgment and decree dated 29.04.2009.

12. Although the findings recorded by the trial Court was affirmed by the appellate Court, but, it appears, as visualised from para 7 of its judgment,

that the appellate Court even without entertaining those issues, i.e., issues No. 2, 4 & 5, has affirmed the said decree of the trial Court on both the above mentioned grounds. The approach of the Court below, therefore, appears to be a failure of its jurisdiction vested in it and deserves to be interfered.

13. It is the settled principles of law that the appellate Court, while entertaining the appeal, possesses the same powers and discharges the same duties as that of the original Court and the appellate Court can review the evidence as a whole subject to statutory limitations, if any, and come to its own conclusion on such evidence. At this juncture, the principles laid down by the Supreme Court in the matter of ***Dilip vs. Mohd. Azizul Haq and another*** reported in **(2000) 3 SCC 607** are to be seen, where it has been observed that once the decree passed by a Court of original jurisdiction has been appealed against, the matter becomes subjudice and the appellate Court is seisin of the whole case and, a court of appeal shall have the same powers and shall perform as nearly as may be the same duties as conferred and imposed on the courts of original jurisdiction. The relevant portion of it as observed therein at para 5 reads as under:-

5.The effect of a decree passed by a court against which an appeal is filed has been considered in *Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri* 1940 FCR 84 : AIR 1941 FC 5 wherein the Federal Court explained that once a decree passed by a court has been appealed against the matter became subjudice again and thereafter the appellate court acquired seisin of the whole case. It has been a principle of legislation in India at least from 1861 onwards that a court of appeal shall have the same powers and shall perform as nearly as may be the same duties as conferred and imposed on courts of original jurisdiction. Such a view was taken even

before the Civil Procedure Code was introduced in *Kristnama Chariar v. Mangammal*, ILR (1903-05) 26 Mad 91 that the hearing of an appeal is under the processual law of the country being in the nature of a rehearing and it is on the theory of an appeal being in the nature of a rehearing that the courts in this country have, in numerous cases, recognised that in moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against. As an appeal is a rehearing, it must follow that if an appellate court dismisses an appeal it would be passing a decree affirming eviction and thereby passes a decree of its own, and in the event it upsets the decree of the trial court, it would be again passing a decree of its own resulting in merger of decree of the trial court with that of the appellate court. In *Garikapati Veeraya v. N. Subbiah Chowdhry* AIR 1957 SC 540 : 1957 SCR 488 this Court enunciated that the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and one to be regarded as one legal proceeding.

14. Similar is the view taken in the matter of ***Santosh Hazari vs. Purushottam Tiwari (Deceased) by Lrs.*** reported in **(2001) 3 SCC 179**, wherein it has been observed by the Supreme Court at paragraph 15 as under:-

15.First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (See *Girijanandini*

Devi v. Bijendra Narain Choudhary) AIR 1967 SC 1124. We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it.

15. Yet, in the matter of ***B. V. Nagesh and another vs. H. V. Sreenivasa Murthy*** reported in (2010) 13 SCC 530, it has been observed by the Supreme Court at paragraphs 4 and 5 as under:-

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide *Santosh Hazari v. Purushottam Tiwari*, (2001) 3 SCC 179 : JT (2001) 2 SC 407, SCC p. 188, para 15 and *Madhukar v. Sangram* (2001) 4 SCC 756, SCC p. 758, para5.)

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties,

we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law.

16. In view of the principles laid down in the above referred matters, the findings, as recorded by the lower appellate Court affirming the decree of the trial Court on the grounds enumerated under Section 12(1)(e) and (g) of the Act, 1961 even without dealing with the relevant issues in this regard, cannot be held to be justified in any manner. Consequently, the substantial question of law as framed is answered in “negative”.

17. The appeal is accordingly allowed and the impugned judgment and decree dated 29.04.2009 passed by the District Judge, Bastar, Place Jagdalpur in Civil Appeal No.11-A/2008 is hereby quashed. The appeal is accordingly directed to be restored to its original number to the file of the concerned appellate Court, who in turn, shall decide the appeal afresh after providing sufficient and reasonable opportunity of hearing to the parties, preferably within a period of four months from the date of receipt of a copy of this order. The parties are hereby directed to remain present before the concerned appellate Court on 05.04.2021. No order as to costs.

18. Registry is directed to remit back the entire record to the concerned appellate Court along with the order of this court forthwith.

Sd/-

(Sanjay S. Agrawal)
JUDGE