

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 19.2.2021****Order Delivered on 24/02/2021****Writ Petition (C) No.2015 of 2019**

- Abdul Sattar, aged about 86 years, S/o Late Aasam Bhai, Khula Silver Chay, R/o Ward No. 12, Manendragarh, Tahsil - Manendragarh, District Korea (CG)

---- Petitioner/Landlord**Versus**

1. Shahnaz Khan, aged about 37 years, D/o Shri Usman Khan, Near Naz Boutique Silver Lodge, Manendragarh, Tahsil Manendragarh, District Korea (CG)
2. The Rent Controlling Authority, Manendragarh District Korea (CG)
3. Chhattisgarh Rent Controlling Tribunal, Raipur, District - Raipur (CG)

---- Respondents

For Petitioner	:	Mr. A.N. Bhakta, Advocate
For Respondent No.1	:	Mr. SR Sinha, Advocate

Hon'ble Shri PR Ramachandra Menon,CJ**Hon'ble Shri Parth Prateem Sahu, J****CAV Order****Per Parth Prateem Sahu, J**

1. Petitioner-landlord has challenged the order dated 15.3.2019 passed by the Chhattisgarh Rent Controlling Tribunal, Raipur (henceforth 'the Tribunal') in Appeal No.34A/2018 setting aside the order dated 28.5.2018 passed by the Rent Controlling Authority, Manendragarh (henceforth 'the Authority') directing eviction of respondent No.1 from the rented shop.
2. Brief facts relevant for disposal of this petition are that petitioner is owner of the shop situated on the

left side of stairs in building known as 'Silver Lodge', Manendragarh (henceforth 'the shop in question'). Vide agreement dated 25.1.2014 the petitioner has given the shop in question on rent to the respondent No.1 for a period of 11 months on the monthly rent of Rs.1,100/-. As per agreement, the tenancy starts on 25.11.2014 and ends on 25.10.2015. On 12.1.2016 the petitioner sent legal notice through his advocate to the respondent No.1 mentioning therein that respondent tenant is habitual defaulter in making payment of rent and has not paid rent for the period as mentioned therein. Arrears of rent of Rs.31,900/- is outstanding against respondent No.1. It is also mentioned in the legal notice that the shop in question is required by petitioner for his family members as they are unemployed and that for getting vacant possession of tenanted shop, there is no requirement to assign any reason if six months' notice is served upon respondent No.1, hence six months' notice is being sent through registered post. This notice was replied by respondent No.1 on 31.5.2016 through her advocate.

Petitioner thereafter filed an application under Section 12 read with Clause (11) (g) & (h) of Schedule-2 of the Chhattisgarh Rent Control Act, 2011 (for short 'the Act of 2011') seeking eviction of

respondent No.1 from the shop in question. The heading of this application shows that application for eviction has been filed on two grounds available to petitioner i.e. for the requirement of family members and eviction without any reason. In the pleadings it is very specifically pleaded that notice has been sent on 12.1.2016 mentioning therein that tenancy will come to an end on 12.7.2016, therefore, to vacate rented accommodation by 12.7.2016, but the respondent tenant has not handed over vacant possession of the shop in question. Application was replied by respondent No.1 mentioning therein that notice sent under Section 12 (2) of the Act, 2011 is not in accordance with law. Application for eviction has been filed only to harass respondent No.1. In additional pleadings, it was pleaded that respondent No.1 is tenant since 2002 and earning her livelihood by running a tailor shop in the rented accommodation, she has deposited the entire rent. Respondent No.1 sought dismissal of application for eviction.

3. The Authority upon conclusion of proceedings allowed the application filed under Clause (11) (h) of Schedule-2 under Section 12 (2) of the Act of 2011 and directed respondent tenant to handover vacant possession of the shop in question to the petitioner-landlord, imposing a condition that shop in question

will not be given on rent for a further period of 12 months. The order of eviction dated 28.5.2018 passed by the Authority was challenged in an appeal before the Tribunal by respondent No.1. The Tribunal taking into consideration the provisions of Clause (11) (h) of Schedule-2 of the Act of 2011 has held that petitioner landlord failed to prove the mode of service of legal notice dated 12.1.2016, date of despatch and date of receipt of notice. The Tribunal further presumed that the notice might have been received by respondent tenant near to the date of sending reply of legal notice i.e. 31.5.2016, and arrived at a conclusion that there is no reason to believe that the application for eviction has been filed after sending six months' notice to respondent tenant and set aside order passed by the Authority by the impugned order.

4. Mr. A.N. Bhakta, learned counsel for the petitioner submits that petitioner has sent legal notice on 12.1.2016 through registered post, which was received and replied by respondent. In reply to legal notice for eviction, the respondent tenant has nowhere pleaded about the date of receipt of legal notice by her, however, there is specific mention that this is reply to legal notice dated 12.1.2016, which clearly shows that legal notice dated 12.1.2016 was received by respondent tenant within time. There is

no denial in reply to legal notice or reply to eviction application filed by the petitioner that notice was not received in time specifying the date of receipt of notice to show that there is non-fulfillment of the provisions contained in Clause (11) (h) of the Schedule-2. He also submits that petitioner along with writ petition has filed the information supplied by the Postal Department, Manendragarh on application of petitioner's son wherein the Post Master on the said application itself has certified in his handwriting that Article Bearing No.RC162964237IN was delivered to Naz Tailors, Silver Lodge Building, Station Road, Manendragarh on 14.1.2016, which clearly shows that legal notice sent on 12.1.2016 was received by respondent No.1 on 14.1.2016 and eviction petition has been filed much after expiry of six months period, as per clause (11) (h) of Schedule-2. Learned counsel further argued that petitioner has filed application for eviction, both under Clause (11) (g) & (h) of Schedule -2. There is specific pleading in the eviction notice as well as in the eviction application that the shop in question is required for occupation of family members of the landlord for which there is requirement of only three months' notice and for the landlords of special category mentioned in the proviso to Clause (11) of Schedule-2 i.e. senior

citizens above the age of 65 years, are entitled to get tenanted accommodation vacated on giving only one month's notice. Petitioner on the date of sending of notice and filing of eviction application was 80 years of age, hence even otherwise the respondent No.1 is not having any case that she has not received notice in accordance with Clause (11) (g) of the Schedule-2. It is further pointed out that during pendency of eviction proceeding, on 14.4.2018 respondent got married to one Mohammed Hanif Raja resident of Khariyaar Road, Odhisha and since then she is residing there and only to harass the petitioner she is not handing over vacant possession of shop in question. In support of this submission, he has filed copy of marriage card as Annexure P-10. Lastly, he submits that respondent No.1 has not paid rent since long though she is in occupation of shop in question, hence she be directed to pay arrears of rent atleast for the period during the pendency of eviction proceedings.

5. Mr. Shakti Raj Sinha, learned counsel for respondent tenant submits that petitioner landlord has not proved as to under what mode the notice dated 12.1.2016 was sent by him and on which date it was received by respondent tenant. Under the provisions of the Act of 2011 the burden is upon the landlord to prove the factum of service of notice

upon tenant to be in accordance with provisions contained in Clause (11) of Schedule-2. The Tribunal has rightly taken into consideration the legal requirement of period of notice and set aside the order of eviction passed by the Authority which does not call for any interference. He further pointed out that the proviso to Clause (11) of the Schedule-2 is applicable only when the notice of eviction sent is for the requirement of tenanted premises for own occupation or for members of family. The Authority has passed the eviction order only under Clause (11) (h) of Schedule-2 and not under Clause (11) (g), hence submission of learned counsel for the petitioner that for the person like the petitioner, who is aged about 80 years, only one month's notice is sufficient, is not correct. He further contended that the Tribunal has already taken into consideration that the petitioner failed to prove the arrears of rent and further submits that the respondent has made attempts to pay rent to the petitioner but he refused to accept. Hence, it is not the fault of respondent No.1 and the petitioner is not entitled for any arrears of rent. He further contended that writ petition is not having any merit because the petitioner failed to prove the date of issuance and date of receipt of legal notice and as such, writ petition be dismissed.

6. We have heard learned counsel for the parties and perused the record of writ petition.
7. The Tribunal has reversed the order of eviction passed by the Authority while allowing appeal only on the ground that the petitioner failed to prove the mode, date of sending of legal notice and date of receipt by respondent to prove that there is compliance of six months prior notice under Clause (11) (h) of Schedule-2.
8. To appreciate rival submissions made by learned counsel for the respective parties, we have perused copy of legal notice placed on record as Annexure P-8, which is dated 12.1.2016. In Para-5 of the notice there is specific pleading with regard to requirement of shop in question for the use of his family members. In para-6 there is pleading that six months' notice is being sent because it does not provide to plead requirement of tenanted accommodation for the landlord. From the contents of legal notice it is apparent that it has been sent on both counts i.e. for personal need and also for getting the shop in question vacated without any reason. At the bottom of notice there is mention that legal notice is being sent through registered post. In reply to legal notice, the respondent has sent reply through her advocate on 31.5.2016. In the reply it is mentioned that reply to the notice sent

by petitioner dated 12.1.2016. There is no mention of date of receipt of legal notice and pleading that notice does not fulfill requirement prescribed under Clause (11) (h) of Schedule-2, but only mentions that notice has been sent on both counts and it is not required for your occupation. Para-6 of the reply dated 31.5.2016 is extracted below:-

“6.यह कि नोटिस की कंडिका 6 गलत होने से अस्वीकार है। यह अस्वीकार है कि दिनांक 25/10/15 को समाप्त हो गयी है। सही तथ्य यह है कि किरायेदारी लगातार है एवं वर्तमान में भी मेरी कार्यार्थिनी आपकी किरायेदार है। यह कि आपने भाड़ा नियंत्रण अधिनियम के प्रावधानों का उल्लेख किया है एवं छै. माह पूर्व नोटिस देने पर आवश्यकता होने की बाध्यता नहीं होने के आधार का भी नोटिस देना बताया है किन्तु आपको उक्त अधिनियम का लाभ प्राप्त नहीं होता है क्यों कि आपने सभी आवश्यकताओं का भी वर्णन किया है एवं आपको वादग्रस्त स्थान की कोई आवश्यकता नहीं है।

9. There is no other pleading with regard to non-compliance of the provisions of clause (11) (g) & (h) of Schedule-2 of the Act of 2011. In Para-8 of eviction application also, the petitioner has very specifically mentioned that notice has been sent on 12.1.2016 and from the date of notice, the tenancy is terminated on 12.7.2016 but even then vacant possession of shop in question has not been handed over to the petitioner. In reply to eviction application it is only mentioned that legal notice has not been

sent in accordance with law, but not very specifically mentioned the date of receipt of legal notice. It is for the respondent tenant to plead in very specific term in reply to legal notice and also in reply to eviction application about the date on which she received legal notice, particularly when legal notice sent by the landlord is admitted to have been received by her. The Tribunal without there being any specific pleading and evidence has presumed in Para-14 of the impugned order that notice might have been received by respondent tenant near to 31.5.2016, which is the date of reply to legal notice. The Tribunal erred in presuming the fact in favour of the tenant, which is in contravention to the provision of Section 12 of the Act of 2011, relevant part of which is reproduced herein below;-

“12. Rights and Obligations of Landlords and Tenants. - (1) Every tenant shall have rights according to Schedule 1. The Tribunal and Rent Controller(s) shall act at all times to secure to the tenant these rights.

(2) Every landlord shall have rights according to Schedule 2. The Tribunal and Rent Controller shall act at all times to secure to the landlord these rights :

Provided that-

(a) In case of any clash of interests of the landlord and the tenant, and/or any point of doubt in respect of matters relating to rent, the benefit thereof shall be granted to the tenant.

(b) In case of any clash of interests of the landlord and the tenant, and/or any point of doubt in respect of matters relating to returning possession of the accommodation to the tenant, benefit thereof shall be granted to the landlord....”

10. Under the provisions of Section 12 (2) of the Act of 2011, the interest of the tenant is protected under Clause (2) (a) and interest of landlord has been protected under Clause (b). Upon perusal of section 12 (2) (b) of the Act of 2011, it is clear that whenever there is doubt in respect of matters relating to returning possession of accommodation, the benefit thereof shall be granted to the landlord. Here, for any reason, if there appeared to be doubt in the mind of the Tribunal with regard to the date of issuance of notice and date of receipt of notice by respondent No.1, in absence of any specific pleading made by respondent tenant, the benefit ought to have been extended to the landlord in terms of Section 12 (2) (b) of the Act of 2011. The Tribunal erred in not considering and applying aforementioned provisions in favour of the landlord and arrived at a wrong conclusion.

11. Another aspect of the case is that petitioner along with writ petition has placed on record copy of information/ certificate given by the Post Master, Manendragarh Post Office on the letter (Annexure P-6) written by petitioner's son with regard to service of legal notice sent by the petitioner. Perusal of Annexure P-6 would show that it is a letter sent by son of petitioner to the Post Master pleading therein that one registered letter was booked on 12.1.2016

for Naz Tailors through his advocate Shri Tulsi Shankar Gupta. Receipt of registered letter became faint, therefore, confirm the registered letter booked on 12.1.2016 and delivery on 14.1.2016. After perusal of record of the Post Office,. the Post Master on the same letter in his handwriting has mentioned that as per record, the above mentioned article was delivered to Naaz Tailor, situated at Silver Lodge Building, Station Road, Manendragarh on 14.1.2016. This letter is infact filed along with writ petition on 15.5.2019. This Court ordered for issuance of notice to respondents on 19.6.2019. Respondent No.1 caused appearance before this Court by filing Vakalatnama through her advocate on 26.7.2019, but till date even after receipt of copy of writ petition along with documents, causing her appearance on 26.7.2019, Annexure P-6 has not been objected in any manner. There is no rebuttal on the part of respondent No.1 with regard to information/certificate given by the Post master with regard to service of legal notice dated 12.1.2016 on 14.1.2016. In the facts and circumstances of the case, looking to the object of the Act of 2011, provisions contained therein and the fact that letter Annexure P-6, which is information/certificate given by the Post Master, has not been controverted in any manner, we find it appropriate to accept the

document/certificate of date of receipt of legal notice, mentioned therein as 14.1.2016 instead of further relegating the case to the Tribunal for its proof, more so when it appears to this Court that said part of contents of Annexure P-6 in absence of any objection or rebuttal will be deemed to be admitted by respondent No.1.

12. For the foregoing reasons, the Tribunal in the opinion of this Court erred in arriving at a finding that the petitioner landlord failed to discharge his burden to prove the date of issuance of notice and date of its receipt by respondent No.1, contrary to the provisions of Section 12 (2) of the Act of 2011.

13. Another aspect of the case is that eviction application has been filed on two grounds available to the petitioner i.e. under Clause (11) (g) & (h) of the Schedule-2 under Section 12 (2) of the Act of 2011. The Authority has not considered the said ground probably for the reason that the authority had considered the order of eviction to be passed under Clause (11) (h) of Schedule-2, there is specific pleading in legal eviction notice and eviction application with regard to the requirement of shop in question for the family members i.e. sons along with others. Under Clause 11 (g) of Schedule-2, spouse, parents, sons, daughters, daughter-in-law and son-in-law are included in the family. Requirement of

notice under Clause (11) (g) for the persons who do not fall under special category, is issuance of three months notice and if the landlord falls within special category, as mentioned therein, one of which is senior citizen (above the age of 65 years), the period of notice has been made of one month only. Age of landlord / petitioner is not in dispute, who on the date of execution of tenancy agreement itself has been shown to be 80 years on 25.11.2014, and is a senior citizen and thus comes within special category. Even from the date of reply to legal notice sent by respondent i.e. on 31.5.2016, till filing of eviction application on 22.8.2016, period of notice will be more than 2 months. Clause (11) (g) of Schedule-2 is extracted below for ready reference:-

“(g) On 3 months notice to the tenant in writing, if the accommodation is required for own occupation and/or occupation by any member of the family including spouse, parent (s), son (s), daughter (s), daughter (s)-in-law, son (s)-in-law.”

14. Upon analyzing the facts and circumstances of the case in the light of provisions under the Act of 2011, we are of the considered view that the Authority and the Tribunal erred in not considering both the grounds raised in eviction application and in setting aside the order of eviction passed by the Authority considering only Clause (11) (h) that too contrary to

the provisions of Section 12 (2) (b) of the Act of 2011. Impugned order is liable to be set aside and it is ordered accordingly. Respondent No.1 is directed to handover vacant possession of shop in question to the petitioner landlord within a period of one month from the date of this order.

15. So far as the submission made by learned counsel for the petitioner with regard to non-payment of rent by respondent No.1 is concerned, pleadings made in the interim application are not replied. This court vide order dated 25.10.2021 directed the respondent to satisfy arrears of rent and also recorded submission of learned counsel for respondent No.1 that all the arrears of rent would be clear and will be reported before this Court. When the case was listed on 4.2.2021, this Court recorded submission of learned counsel for respondent No.1 that respondent tenant was regularly paying rent but after refusal of rent and demand of vacant premises is raised, there are some defaults, but respondent No.1 is ready to clear arrears as well. Accordingly, the case was adjourned for next week. On 19.2.2021 when the case was taken up for hearing, learned counsel for respondent No.1 made same submission and submitted that respondent tenant was ready to deposit the entire rent and prayed for an opportunity. This Court refused to accept this

submission of adjournment of case. Refusal to accept rent has been mentioned in the reply to legal notice dated 31.5.2016 sent by respondent mentioning therein that landlord refused to accept the rent in the month of January, 2016 and the rent of January, February, March, 2016 has been sent by cheque, there is no mention of details i.e. number and date of cheque in the reply to the legal notice. In the application for grant of interim relief also, the date from when respondent tenant has not paid the rent is not pleaded. In the said circumstance, we find it appropriate to direct the respondent No.1 to pay the arrears of rent from the date of filing of writ petition i.e. 15.5.2019, till the date of handing over vacant possession of shop in question.

16. In view of above, writ petition is allowed in the aforementioned term.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-