

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 854 of 2019****Reserved on.05.01.2021****Pronounced on.12.01.2021**

- Manoj Motwani S/o Shri A.H. Motwami Aged About 56 Years R/o Shop No. 03, Mohan Singh Market , M.G. Road, Raipur , Tahsil And District Raipur Chhattisgarh. **---- Appellant**

Versus

- Smt. Darshan Kaur Ahluwalia W/o Late Shri Mahendrapal Singh Ahluwalia Aged About 58 Years R/o - 215, Adarsh Nagar, Narmada Road, Jabalpur, Tahsil And District Jabalpur Madhya Pradesh. **---- Respondent**

For Appellant:	: Shri Anurag Dayal Shrivastava, Advocate.
For Respondent:	: Shri Ankur Agrawal, 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 'C.P.C.') questioning the legality and propriety of the judgment and decree dated 08.11.2019 passed in Civil Appeal No. 36/2014 whereby, the learned 6th Additional District Judge, Raipur while affirming the judgment and decree dated 29.01.2014 passed by 5th Civil Judge Class-I, Raipur in Civil Suit No. 147-A/2011, has dismissed the appeal. The parties to this appeal shall be referred hereinafter as per their description in the Court below.
2. Briefly stated the facts of the case are that plaintiff Smt. Darshan Kaur Ahluwalia, instituted a suit for eviction in respect of Shop No.3, the suit shop, comprising of Mohan Singh Market situated at Jawaharlal Nehru Ward No.15, M.G. Road, Raipur, which was let out to defendant Shri

Manoj Mojwani, at a monthly rent of Rs. 1331/- (Rupees One Thousand Three Hundred and Thirty One Only) on the ground enumerated under Section 12 (1) (f) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter referred to as the 'Act of 1961'). It is pleaded in the plaint that the alleged suit shop is required bonafidely for her unemployed son Hardeep Singh Ahluwalia for carrying out the business of 'Motor Parts and Accessories' and for the said purpose, suitable and alternative accommodation is not available to her in the city of Raipur. It is pleaded further that despite the issuance of quit notice, issued on 30.04.2008, the defendant did not vacate the suit shop, giving rise to the institution of the suit in the instant nature, instituted on 17.06.2008.

3. The aforesaid claim has been contested by the defendant denying specifically the alleged need of the plaintiff for carrying out the said business of her son. According to him, the plaintiff's entire family is settled at Jabalpur, where her son is doing his business, as such, the plaintiff's alleged need cannot be said to be a genuine one. It is contested further on the ground that the plaintiff has sold one of her shops, which was adjacent to the suit shop, to someone and wanted to alienate the suit shop to him also, but, owing to non-settlement of the price, it could not be sold and, therefore, the suit has been filed with a malafide intention to get it vacated somehow or the other.
4. After considering the evidence led by the parties, it has been held by the trial Court that the suit shop is required bonafidely by the plaintiff for her unemployed son for carrying out of his business of 'Motor Parts and Accessories' and held further that the suitable and alternative accommodation for the said purpose is not available with her in the

concerned city. In consequence, decreed the plaintiff's Claim.

5. The aforesaid finding of the trial Court has been affirmed further by the lower Appellate Court in an appeal preferred by the defendant.
6. Shri Anurag Dayal Shrivastava, learned counsel appearing for the Appellant/Defendant submits that while passing the judgment and decree under appeal, the Courts below have committed an illegality in holding that the suit shop is required bonafidely by the plaintiff for her son for carrying out the alleged business of 'Motor Parts and Accessories'. While referring to the documentary evidence like Ex.D-13 to Ex. D-17, the income tax return submitted by the plaintiff's son, it is contended that he is the proprietor of one D.K. Construction and in view of the suppression of his involvement as such, the alleged need of the plaintiff ought not to have been held to be her genuine need. Further contention of him is that a suit of a similar nature was instituted earlier by the plaintiff against one of her tenants, namely, Ramesh Bhaktani and after obtaining the vacant possession of it, it was sold to someone else, therefore, it cannot be said that the alleged need was a bonafide need of the plaintiff. The decrees of the Courts below are, therefore, liable to be set aside. In support, he placed his reliance upon the decision rendered in the matter of **Iswar Bhai C. Patel Alias Bachu Bhai Patel *Versus* Harihar Behera and Another** reported in (1999) 3 SCC 457.
7. I have heard learned counsel for the Appellant and perused the entire record carefully.
8. A suit for eviction under clause (f) of sub-section (1) of Section 12 of the Act, 1961 was instituted by the plaintiff for the bonafide need of the suit

shop for her unemployed son Hardeep Singh Ahluwalia for carrying out of his business of 'Motor Parts and Accessories'. According to the plaintiff, the suitable and alternative accommodation for the said purpose is not available with her in the city of Raipur and, therefore, the suit shop is required bonafidely for the alleged need of her unemployed son. It was, however, denied by the defendant on the ground that since the plaintiff had sold one of her shops adjacent to the suit shop to someone else, therefore, the alleged need of the plaintiff particularly when her son was engaged and working as a contractor of said D.K. Construction, cannot be held to be a genuine one.

9. From perusal of the records, it appears that in order to substantiate the alleged need, plaintiff Smt. Darshan Kaur Ahluwalia has examined herself along with her son and deposed that she required the suit shop bonafidely for the alleged business of her unemployed son and stated further that suitable and alternative accommodation for the said purpose is not available to her in the said city. Even in her cross-examination as evidenced by para 12, it was found that her son is unemployed. The evidence so led by the plaintiff in support of her claim, could not be rebutted in her cross examination and the plaintiff has, thus, established her alleged bonafide need of the suit shop for the purposes of carrying the said business of her son.
10. In so far as the contention of Shri Shrivastava, learned counsel for the Appellant based upon the aforesaid documentary evidence is concerned, the same is, however, noted to be rejected. It is true, as evidenced from documentary evidence marked as Ex.D-15 to Ex.D-17, that he is shown to be the proprietor of said D.K. Construction, but a

bare perusal of the documentary evidence marked as Ex.D-13 would show that it was his proprietary business without showing its name, while no trade name of his proprietorship business found place in Ex.D-14. In such circumstances and in absence of any cogent and reliable evidence led by him, it is difficult to hold that he was running the said proprietorship business in the name of D.K. Construction at the time of institution of the suit.

11. Pertinently to be noted here further that the plaintiff's alleged need was for carrying out her son's business of motor-parts and its accessories which as found herein above, was duly established by her. That apart, it appears from their cross-examination that no question in order to show that it was not her genuine need was put. In view of the said background, it cannot be said that the plaintiff's alleged need was not a genuine need, as asserted by the Appellant herein and the reliance of Mr. Shrivastava in the matter of Iswar Bhai C. Patel Alias Bachu Bhai Patel *Versus* Harihar Behera and Another (supra) which is, however, based upon a different fact is, therefore, noted to be distinguishable and would not be of any help to him as the plaintiff and her son, both have entered into the witness box. As such, no adverse inference could be drawn under Section 114 of the Indian Evidence Act, as alleged by him.
12. Further contention of the appellant as made herein that since the plaintiff had sold one of her shops adjacent to the suit shop to one Salu Hotwani, while inviting attention to the registered deed of sale dated 14.07.2003 (Ex. D-3) executed in her favour, therefore, the alleged need of the plaintiff cannot be said to be her genuine need is, however, also noted to be rejected as the alleged alienation was made in the

year 2003 i.e., much prior to the institution of the suit when the plaintiff was in need of money. However, the alleged need of the plaintiff for her unemployed son is required to be seen on the date when the suit was filed. Since the suit was filed after the said alienation, therefore, it cannot be the basis for negating the alleged need of the plaintiff. The Courts below, therefore, upon due and proper appreciation of the evidence led by the parties, have rightly arrived at a conclusion that the alleged need of the plaintiff was her genuine need for carrying out the said business of her unemployed son.

13. Consequently, I do not find any question of law, much less the substantial questions of law, which arise for determination in this appeal. The appeal, being devoid of merit, is hereby dismissed at admission stage itself.

No order as to costs.

Sd/-

(Sanjay S.Agrawal)
JUDGE