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(2019) 08 CHH CK 0211

Chhattisgarh High Court

Case No: First Appeal No. 96 Of 2011

Manish Kashyap — APPELLANT

Vs

Rajkumari Dewangan And Ors — RESPONDENT

Date of Decision: Aug. 30, 2019

Acts Referred:
Code Of Civil Procedure 1908 â€" Section 96#Chhattisgarh Accommodation Control Act, 1961 â€" Section 12(1)(a), 12(1)(f)

Citation: (2019) 08 CHH CK 0211

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: P.R. Patankar, Manoj Paranjpe, Shubhank Tiwari

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 07.04.2011 passed by Seventh

Additional District Judge, Raipur (C.G.) in Civil Suit No. 21A/2009, wherein the said court decreed the suit filed by the original respondent namely

Smt. Rajkumari Dewangan/ plaintiff (Present respondents are legal representatives of said Smt. Rajkumari Dewangan) for eviction from shop situated

at Tikrapra @ Gabarapara, Pachpedinaka Chowk ahead of police outpost shown in the map filed with the plaint and for payment of arrears of rent.

2. The original respondent filed a suit for eviction of one shop given in rent to the appellant/ tenant for rent of Rs. 1500/- per month. The first rent

agreement was executed between the parties on 08.08.2004 for the period commencing from 01.06.2004 to 30.06.2005, thereafter, second rent

agreement was executed on 12.07.2005 for the period commencing from 30.08.2005 to 30.07.2006. The suit was filed on the ground of bonafide need

that she requires the shop for business of her son Fanindra Dewangan and also claimed arrears of rent from December, 2007 to February, 2009

amounting to Rs. 27,000/-. After recording evidence of both side and after hearing the parties, the trial court decreed the suit as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) Fanindra Dewangan (PW-3) deposed before the trial court that the landlord is having four shops and one shop (third number) is vacant, therefore,

they can fulfill their requirement by the shop which is available.

(ii) The appellant is regularly paying the rent, therefore, he cannot be evicted on the ground of arrears of rent.

(iii) The trial court has not evaluated the evidence in its true perspective, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial court is based on proper marshaling of

evidence and the same is not liable to be interfered while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6. First question for consideration before this Court is whether the ground of eviction is available due to arrears of rent. As per evidence of

respondents side, the appellant/ tenant has not paid arrears of rent from December, 2007 to February, 2009 @ Rs. 1500/- per month which comes out

to Rs. 27,000/-. A notice was served to him on 30.12.2008 (Ex. P/9) which was received by the appellant as per Ex. P/10 which is acknowledgment.

The notice was replied on 30.01.2009 as per Ex. P/11. From the evidence, it is established that the arrears of rent to the tune of Rs. 27,000/- was not

paid within two months from the date on which notice of demand for arrears of rent was served and the trial court decreed the suit for arrears of rent

vide judgment dated 07.04.2011.

7. It is contended on behalf of the appellant that Rs. 10,000/- was deposited as earnest money, but the same cannot be termed as payment of arrears

of rent. Any earnest sum which is deposited at the time of rent agreement can be refunded at the time of vacation of premise, therefore, from the

entire evidence on record, it is proved that the ground under Section 12(1)(a) of the Chhattisgarh Accommodation Control Act, 1961 (for short ""the

Act, 1961"") is available to the respondents for eviction of the appellant.

8. Second question for consideration before this Court is whether the ground under Section 12(1)(f) is available to the respondents. Admittedly, the

premise in question is rented for non-residential purpose. As per evidence of respondents side, the original respondent was having four sons and seven

daughters and as per evidence, her son Virendra Dewangan is unemployed. Again, her two grand son namely Laxminarayan Dewangan & Ved

Prakash Dewangan are also unemployed. It is also deposed before the trial court that one son namely Fanindra Dewangan is running auto repair shop

in rented premise. The appellant side argued that one shop is vacant, therefore, the same can be used for running business and bonafide requirement is

not established for evicting the premise in question.

9. From the evidence, it is clearly established that the original respondent is having large family. Her one son Virendra Dewangan is unemployed.

Fanindra Dewangan is running shop in rented premise and again, her two grand son namely Laxminarayan Dewangan and Ved Prakash Dewangan

are also unemployed. The landlord cannot be asked to run his shop in rented premise and it is choice of the landlord as to which shop is suitable for

running his business. The tenant or the court cannot dictate the landlord. Looking to the entire evidence, bonafide requirement of landlord is

established.

10. It is contended on behalf of the appellant that the original respondent namely Smt. Rajkumari Dewangan did not depose before the trial court,

therefore, bonafide requirement is not established and version of power of attorney holder namely Arvind Dewangan is not sufficient for establishing

the requirement. In the present case, the power of attorney holder is son of original respondent Smt. Rajkumari Dewangan namley Arvind Dewangan.

As the power of attorney holder is family member of landlord, he is aware about tenancy and bonafide requirement. If power of attorney holder would

have been stranger, the position would have been different, but that is not the case here, therefore, the version of Arvind Dewangan can be legally

acted upon and looking to the entire evidence on record, this Court has no reason to record contrary finding what is recorded by the trial court

regarding bonafide requirement. Argument advanced on behalf of the appellant is not sustainable.

11. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellant and in favour of the respondents on the following

terms and conditions:-

(i) The appeal is dismissed with cost.

(ii) The appellant to bear cost of the respondents throughout.

(iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.

(iv) A decree be drawn accordingly.