

(2019) 02 CHH CK 0437

**Chhattisgarh High Court****Case No:** Writ Petition (C) No. 49 Of 2019

Mohd. Asif Khan

APPELLANT

Vs

Anurag Jain And Ors

RESPONDENT

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**Date of Decision:** Feb. 25, 2019**Hon'ble Judges:** Ajay Kumar Tripathi, CJ; Parth Prateem Sahu, J**Bench:** Division Bench**Advocate:** Kshitij Sharma, Pushpendra Kumar Patel, Vikram Sharma**Final Decision:** Allowed

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**Judgement**

Ajay Kumar Tripathi, CJ

1. Petitioner is a tenant of Respondent No.1. He has been compelled to assail the order dated 02.11.2018 passed by the Chhattisgarh Rent Control

Tribunal (hereinafter referred to as 'the Tribunal') which has ordered eviction and set aside the order dated 28.02.2018 passed by the Rent Controller,

who did not find any merit in the application of the landlord for eviction.

2. On 24.07.2017, an application was filed before the Rent Controller, Raipur by the landlord, namely, Anurag Jain. An agreement was supposedly

entered on 18.10.2016 for renting out an area of 650 sq.ft. at Malviya Road, Raipur for running a cloth shop. Rental of Rs.35,000/- per month was

fixed payable by 20 th of the subsequent month. An advance by way of security deposit to the extent of Rs.1,50,000/- was also paid by the present

Petitioner. Accepted position is that from 20.11.2016 till 20.02.2017 rent was regularly deposited @ Rs.35,000/- per month. Subsequently it seems that

a request was made by the tenant to adjust the subsequent rental from the advance because some dispute arose on providing possession of the agreed

area in terms of the agreement.

3. The landlord issued a notice on 27.06.2017 and thereafter filed an application for eviction on 24.07.2017 even before the expiry of the period of notice claiming that the tenant was a habitual defaulter.

4. The Rent Controller after taking evidence and pleadings into consideration found that the tenant was never given possession of 650 sq.ft., the rent for that area was Rs.35,000/- per month, the tenant was actually given possession of only 110 sq.ft. and rest of the area was under occupation of other tenants. Keeping in mind the agreement as to the rent payable for the total area of 650 sq.ft., the Rent Controller came to a finding that rent of only Rs.6,000/- was payable for 110 sq.ft. of possession by the tenant.

5. After all the deliberations and the details, the finding of the Rent Controller was that there was an agreement but it seems possession of the entire area of the rental premises was not given possession of. The tenant was in possession of 110 sq.ft., he was entitled therefore only to pay Rs.6,000/- as rent. He had already paid rent @ Rs.35,000/- from October till February and had also offered to get the rental adjusted from the advance of security of Rs.1,50,000/-.

6. All told, therefore the Rent Controller held that the ground so taken in the application by the landlord that the tenant was a habitual defaulter was not made out. In fact, there was no default and even if for the shake of argument it is accepted that the tenant was refusing to pay Rs.35,000/- as rent for him to become a habitual defaulter, default to the extent of three months was required, which was not established.

7. The Rent Controller, therefore, decided to dismiss the application for eviction holding that the grounds for eviction are not made out.

8. The landlord, therefore, decided to move the Rent Control Appellate Tribunal, Raipur. The Tribunal did not find any infirmity with regard to the findings of fact arrived as recorded by the Rent Controller about the actual possession and proportionate rent payable. The factual position stood the same, but despite the said finding it comes to a conclusion that since the tenant did not pay rental and had himself offered to get the security amount adjusted after February, 2017, therefore, it amounts to default on his part to pay rent.

9. We are of the opinion after hearing the parties that the Tribunal seems to have committed serious error not only of the fact but also of law for the reason that even before the period of expiry of notice the application for eviction was filed. The ground for eviction was said to be habitual default on the part of the tenant if not failure to pay rent by him in terms of the agreement. This finding given by the Appellate Tribunal is erroneous for the reason that the Appellate Tribunal did not interfere with the finding of the Rent Controller that even though 650 sq.ft. of the area was required to be given to the tenant @ Rs.35,000/- per month, the actual areas under possession of the tenant was 110 sq.ft. and that could be the reason even in the petition for eviction before the Rent Controller possession of 110 sq.ft. was only demanded.

10. If there is a concurrent finding that the tenant was never given possession of 650 sq.ft. he was in actual possession of 110 sq.ft., eviction of 110 sq.ft. was prayed for then the rental will be only 6,000/- as held by both the forums and the calculation for holding the tenant to be in default @ Rs.35,000/- per month was misplaced. By no calculation or interpretation the tenant can be held to be in perceptual default for which he needed to be evicted.

11. The Tribunal, therefore, took an erroneous view and wrongly set aside the order of the Rent Controller dated 28.02.2018. The factual aspect of matter cannot be seriously disputed by the counsel representing the landlord because he has not filed any appeal or challenged the finding either of the Rent Controller or the Tribunal with regard to the possession and proportionate rental which was required to be paid by the tenant to the landlord.

12. In these circumstances, therefore, we hold that the Appellate Tribunal seems to be in serious error in passing the order of eviction of the tenant i.e. the Petitioner vide its order dated 02.11.2018. The impugned order, therefore, is set aside. The order of the Rent Controller is upheld.

13. Counsel for the Petitioner i.e. the tenant informs the Court that during pendency of the writ application he was evicted on 20.01.2019. The adjustment of account in terms of the declaration and adjudication made with regard to the actual area possession and the rental which is required to

be paid will be worked out between the parties and if any refunds or payments are required to be made, the same will be made as final settlement.

However, since the eviction of the tenant was an erroneous decision passed by the Tribunal which have been implemented he is ordered to be

restored back to 110 sq.ft. of space of which he was in possession of within a period of 15 days from today by the landlord.