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**(2018) 08 CHH CK 0341**

**Chhattisgarh High Court**

**Case No:** Writ Petition (227) No. 120 Of 2018

Jayesh Parekh

APPELLANT

Vs

Sourabh Nathani And Ors

RESPONDENT

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**Date of Decision:** Aug. 29, 2018

**Acts Referred:**

- Chhattisgarh Rent Control Act, 2011 - Section 2(5), 12(2)

**Hon'ble Judges:** Ajay Kumar Tripathi, CJ; Parth Prateem Sahu, J

**Bench:** Division Bench

**Advocate:** Ashish Surana, G. D. Vaswani

**Final Decision:** Dismissed

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### **Judgement**

Ajay Kumar Tripathi, CJ

1. This writ application has been preferred against the so-called illegal and arbitrary order dated 31/01/2018 (Annexure P/1) passed by the

Chhattisgarh Rent Control Tribunal, Raipur in Appeal No. 74-A/2017 since it has upheld the order of eviction dated 31/10/2017 (Annexure P/2) passed by the Rent Controller, Raipur in Case No. 41-90(8) for the year 2014-15.

2. The private respondent filed an application under Section 12(2) of the Chhattisgarh Rent Control Act, 2011 (hereinafter referred to as 'the Act')

seeking eviction of the petitioner from the suit premises, which is a shop situated at M.G. Road, Raipur, which is Municipal House No.34/25 to 32, measuring 900 square feet.

3. The private respondent claimed himself to be co-owner of the suit property and the eviction was sought on the ground that the petitioner has failed to pay the rent for five long years. This fact is not in dispute.

4. Prior to institution of the suit, even a notice dated 05/09/2014 was issued to the petitioner i.e. tenant stating all these facts and giving him a window

of six months for compliance with the demand made in the notice.

5. Before the Rent Controller, a defence was taken on behalf of the tenant that there was no landlord-tenant relationship between the private

respondent and the petitioner. No agreement was entered between them creating tenancy. That the petitioner was inducted as a tenant by the

grandfather of the respondent and that the petitioner was paying rent regularly to the Manager or so-called Munshi of one Laxmi Narayan Nathani, till

March 2010. Since nobody turned up or demanded or received rent nor any information was given to the petitioner about the death of Laxmi Narayan

Nathani, therefore, the rent was not paid, but reason for non- payment was not lack of willingness, but due to lack of proper information or demand.

6. Evidence was taken on behalf of the parties. So far as the private respondent is concerned, he not only represents himself but also represents his

family, who are the rightful owners of the property in question. No evidence or material was produced by the petitioner to establish that the private

respondent has no co- relation with the property in question. The status of the private respondent being the grand son of late Laxmi Narayan Nathani

in fact has not even been questioned and disputed.

7. To examine the strength of the contention of the petitioner, with regard to the status or the right of private respondent to give a notice or claim

arrears of rent or demand eviction, one has to refer to the definition of the word 'Landlord' as provided under Section 2(5) of the Act, which reads as

under :-

2(5) ""Landlord"" means a person who for the time being is receiving or is entitled to receive, the rent of any accommodation, whether on his own

account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would

so receive the rent or to be entitled to receive the rent, if the accommodations were let to a tenant;

8. A reading of the above definition would make it abundantly clear that the private respondent could not only demand rent on his behalf, but on behalf

of or for the benefit of any other person, who would so receive the rent or be entitled to receive the rent for the accommodation under the possession of a tenant. The objection of the petitioner on this count, therefore, is negated on the basis of the legal definition which has been given to the term 'Landlord'.

9. This Court is further not impressed by the submission made on behalf of the petitioner that since nobody informed and nobody came to demand rent, therefore he was not sure as to what is required to be done for payment of the rent, especially, when it emerges from the pleadings that Shri Laxmi

Narayan Nathani died before March 2010. This line of argument could have been very well appreciated if the period of default was a few months and

did not extend over five years. No tenant would be expected to be comfortable and snug for five years by not paying rent or even trying to find out as

to why the rent was not being demanded or if there is mischief behind non-demand then what legal protection he can invoke for himself, so that the

default in payment of rent could not be used against him, as reason for eviction.

10. The explanation or argument made for non-payment of rent for a period of five years is also lame and therefore fit to be rejected.

11. Both the Rent Controller as well as the Rent Control Tribunal have found as a matter of fact about the bonafide or the right of the private

respondent to demand or beget rent, which include arrears of rent and also claim eviction on the ground of default, especially, when notice was given

to the petitioner on 05/09/2014 giving a window of six months as statutorily required. Since no appropriate remedial measures were taken by the

petitioner, the private respondent was left with no option but to move the authorities, which have held in favour of the private respondent, on every

count.

12. Since we have not found any error in the two concurrent findings given by Rent Control Tribunal as well as the Rent Controller in the impugned

orders before us, this writ application is fit to be dismissed and is dismissed.