(2016) 07 CHH CK 0009

CHHATTISGARH HIGH COURT

Case No: Civil Revision No. 98 of 2015

Jethmal Soni		APPELLANT
	Vs	
Hariom Soni		RESPONDENT

Date of Decision: July 27, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2, Order 9 Rule 9
- Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 - Section 12(1)(a), Section 12(1)(e)

Citation: (2016) AIR(Chhattisgarh) 197

Hon'ble Judges: Sanjay K. Agrawal, J.

Bench: Single Bench

Advocate: Mr. Rakesh Thakur, Advocate, for the Respondents; Mr. V.G. Tamaskar, Advocate, for the Petitioner

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sanjay K. Agrawal, J. - Plaintiff No.1-Hariom Soni and five others instituted a suit for eviction, recovery of possession and arrears of rent against defendant-Jethmal Soni on the ground under Section 12 (1) (a) and (e) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as "the Act of 1961") and stated that the suit accommodation is required bona fide for residence of plaintiff No.1-Hariom Soni.

2. In that suit, defendant-Jethmal Soni appeared before the trial Court on being summoned and filed an objection under Order 9, Rule 9 of the CPC stating inter-alia that previously instituted suit by Ganesh Prasad Soni and four others/plaintiffs herein for eviction and arrears of rent had already been dismissed by the trial Court vide judgment and decree dated 13.3.95 passed in Civil Suit No.81A/83 and therefore, the instant suit is barred by Order 9, Rule 9 of the CPC and therefore, civil suit be dismissed.

3. The trial Court by its impugned order dated 17.8.2015 rejected the objection of the petitioner/defendant holding the instant suit is not covered by Order 9, Rule 9 read with Section 21 of the CPC.

4. Feeling aggrieved against the order rejecting application under Order 9, Rule 9 read with Section 21 of the CPC, the present civil revision has been filed under Section 115 of the CPC.

5. Mr. V.G. Tamaskar, learned counsel appearing for the petitioner/defendant, would submit that previously instituted suit by the plaintiff"s herein claiming eviction and arrears of rent having already been dismissed by the trial Court vide judgment and decree dated 13.3.95 passed in Civil Suit No. 81A/83 (Ganesh Prasad Soni and four others v. Jethmal Soni), the instant suit based on same cause of action is clearly barred by Order 9, Rule 9 read with Section 21 of the CPC. Learned counsel would rely upon the matter of **Suraj Rattan Thirani and others v. Azamabad Tea Co. Ltd. and others, AIR 1965 SC 295** and **Smt. Karuna Chaturvedi & Ors. v. Smt. Sarojini Agrawal & Ors., AIR 2010 Madhya Pradesh 109** to buttress his submission that in both the suits, cause of action is same and therefore, subsequent suit is liable to be dismissed by Order 9, Rule 9 of the CPC and consequently, the impugned order be set aside and revision be allowed.

6. On the other hand, Mr. Rakesh Thakur, learned counsel appearing for the respondents/plaintiffs, would submit that previously instituted suit by plaintiffs-Ganesh Prasad Soni and four others was dismissed in absence of the plaintiffs and that suit was for bona fide need of Ganesh Prasad Soni, who has died now and the instant suit is for eviction, arrears of rent and bona fide need of plaintiff No.1-Hariom Soni. He would further submit that eviction proceeding under the Act of 1961 on the ground of bona fide requirement and non-payment of rent is a recurring cause of action, therefore, the plaintiffs are not precluded from instituting fresh suit for eviction. He would rely upon the judgment of the Supreme Court in the matter of **N.R. Narayan Swamy v. B. Francis Jagan, (2001) 6 SCC 473**.

7. In rejoinder, learned counsel for the petitioner/defendant would submit that in previously instituted suit it has already been held that the defendant is not tenant of the plaintiffs and therefore, the order impugned deserves to be set aside.

8. I have heard learned counsel appearing for the parties, considered their rival submissions made therein and gone through the records with utmost circumspection.

9. It is not in dispute that the landlord/plaintiff had earlier instituted a suit seeking eviction of tenant under Section 12 (1) (a) and 12(1) (e) of the Act of 1961. That suit bearing Civil Suit No.81-A/1983 was dismissed for default on 13.03.1995, thereafter the instant suit was filed by the landlord/plaintiffs for eviction on the ground under Section 12(1) (a) and (e) of the Act. This suit is for bona fide need of plaintiff No.1. The cause of eviction is recurring cause of action and the landlord/plaintiff is not precluded from instituting a fresh

eviction suit on the ground of non-payment of arrears of rent and that they require the suit accommodation for bona fide need of plaintiff No.1-Hariom Soni.

10. Their Lordships of the Supreme Court in **Surajmal v. Radheysham, (1988) 3 SCC 18** have held that the bona fide need must be considered with reference to the time when a suit for eviction is filed and it cannot be assumed that once the question of necessity is decided against the plaintiff it has to be assumed that he will not have a bona fide and genuine necessity ever in future. Their Lordships have held as under:-

"8. The learned counsel for the appellant Sunderbai contended that in substance the case of the plaintiff-respondent in the earlier eviction suit and in the present suit is the same and since the earlier suit was dismissed the present suit also should be dismissed. The High Court in paragraph 4 of its judgment pointed out that the nature of requirement pleaded in the earlier suit was different from, that in the present suit. The first appellate court while deciding the issue against the defendant observed that the bona fide need must be considered with reference to the time when a suit for eviction is filed and it cannot be assumed that once the question of necessity is decided against the plaintiff it has to be assumed that he will not have a bona fide and genuine necessity ever in future. We are in agreement with the views as expressed by the two courts."

11. Their Lordships of the Supreme Court in **K.S. Sundraraju Chettar v. M.R. Ramachandra Naidu, (1994) 5 SCC 14**, have held that cause for eviction is a recurring cause of action and even if the existence of such cause of action had not been found in a previous proceedings for eviction, the same cannot be discarded if such claim is established by cogent evidence adduced by the landlord in subsequent proceedings. It was held as under:-

"10. After giving our careful consideration to the facts and circumstances of the case, it appears to us that non-mention of a reasonable ground for eviction on the basis of which a claim for eviction is later on founded usually raises a suspicion about the existence of such ground but such non-mention by itself cannot disentitle a landlord to claim eviction on such ground. If a claim for eviction founded on such ground in the petition for eviction is proved to be well-founded and the same is consistent with the grounds on which eviction is permissible in law, the landlord will be entitled to a decree for eviction notwithstanding the fact that such ground was not mentioned in the notice for eviction. In our view, the appellate authority has rightly indicated in the facts of the case that the partnership business under the name and style of Govindammal and Company was in existence even prior notice for eviction by the landlord. Such partnership business was registered and the licence for the business was obtained and the business had been subjected to assessments made by the income-tax authorities.

Hence, such business was not brought into existence only for the purpose of making a foundation for eviction of the tenant with mala fide intention. Hence, in the facts and circumstances of the case, it cannot be reasonably held that the claim of bona fide

requirement on account of the said partnership business is per se mala fide and should not be taken into consideration simply because the case for bona fide requirement on that account had not been mentioned in the notice for eviction. There is no manner of doubt that the bona fide requirement is required to be considered objectively with reference to the materials on record that it is necessary to determine the real intention of the landlord on the basis of evidences adduced in a case. If the materials on record clearly justify a case of bona fide requirement, there will be no occasion for the Court to hold that the landlord did not require the premises bona fide simply because on a previous occasion the action of the landlord for bringing an eviction case was not bona fide. It should be borne in mind that cause for eviction is a recurring cause of action and even if the existence of such cause of action had not been found in a previous proceeding for eviction, the same cannot be discarded if such claim is established by cogent evidences adduced by the landlord in a subsequent proceeding. It will not be correct to hold that only because after a tenant was evicted by the landlord on the ground of reasonable requirement for building and reconstruction, the landlord did not make the alleged reconstruction but let out the premises to another tenant after obtaining possession, any subsequent eviction case for the said premises deserves to be dismissed in limine. The landlord, in our view, may bring an action for eviction of the tenant on subsequent cause of action justifying a case of bona fide requirement.

Similarly, rejection of a case for building and reconstruction by itself will not disentitle the landlord to get an order of eviction if the eviction on such ground can be founded in a changed circumstance. We may also indicate here that the contention that the Rent Act is a legislation for protecting a tenant will be over simplification of the legislative import of the Rent Act. In our view, it will be more appropriate to hold that the Rent Act regulates the incidence of tenancy and inter se rights and obligations of the landlord and tenant."

12. Their Lordships of the Supreme Court in N.R. Narayan Swamy (supra) have held that in eviction proceedings under the Rent Act the ground of bona fide requirement or non-payment of rent is a recurring cause, and therefore, the landlord is not precluded from instituting fresh proceedings. Their Lordships have held as under:-

"6. In our view, the High Court ought to have considered the fact that in eviction proceedings under the Rent Act the ground of bona fide requirement or non-payment of rent is a recurring cause and, therefore, landlord is not precluded from instituting fresh proceeding. In an eviction suit on the ground of bona fide requirement the genuineness of the said ground is to be decided on the basis of requirement on the date of the suit. Further, even if a suit for eviction on the ground of bona fide requirement is filed and is dismissed it cannot be held that once a question of necessity is decided against the landlord he will not have a bona fide and genuine necessity ever in future. In the subsequent proceedings, if such claim is established by cogent evidence adduced by the landlord, decree for possession could be passed."

13. A conspectus of the above-mentioned judgments would show that in eviction proceedings under the Rent Act, the ground of bona fide requirement or non-payment of rent is recurring cause of action, therefore, landlord is not precluded from instituting fresh proceedings even if suit filed for eviction on the ground of bona fide requirement is dismissed. If in the subsequent suit such claim is established by legal evidence adduced by landlord, decree for eviction could be passed.

14. Judgments relied upon by learned counsel for the applicant in Suraj Rattan Thirani (supra) and Smt. Karuna Chaturvedi (supra) are clearly inapplicable to the facts of the case. In both the cases, subsequent suit was based on same cause of action and was held to be barred, whereas in the present case, subsequent suit is for eviction on the ground of bona fide requirement and non-payment of rent, which is recurring cause of action.

15. Applying the law laid down by Their Lordships of the Supreme Court in above-stated judgments, it is quite vivid that previous suit for eviction on the ground of bona fide requirement and arrears of rent was dismissed for want of prosecution on 21.2.95 and subsequent suit for eviction for non-payment of arrears of rent and bona fide requirement of plaintiff No.1. Since the cause for eviction is continuous and recurring cause of action, second suit is maintainable and the plaintiffs are not precluded from instituting fresh proceedings. It is for the plaintiffs to establish by leading appropriate evidence to get a decree for eviction and such an eviction suit is not barred under Order 9, Rule 9 of the CPC as the cause of eviction is recurring and continuing.

16. As a fall out and consequence of the aforesaid discussion, I am of the considered opinion that the trial Court is absolutely justified in rejecting the application filed under Order 9, Rule 9 of the CPC.

17. Accordingly, the civil revision being without substance is liable to be and is accordingly dismissed leaving the parties to bear their own cost(s).