AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 322 of 2018

Judgment reserved on : 31.10.2018
Judgment delivered on : 26.11.2018

1. Ajay Bafna, S/o. Late Fulchand Bafna, Aged About 40 Years, R/o. Malviya Nagar, Durg, District Durg, Chhattisgarh.
2. Hukumchand Bafna, S/o. Punamchand Bafna, Aged About 73 Years (Now 76 Years), R/o. P.C. Bafna & Company, Infront Of Samta Sari Stores, Ganjpara, Durg, Tahsil & District Durg, Chhattisgarh.

---- Appellants

Versus

1. Smt. Kamla Bai Bhattad, Wd/o. Late Khushalchand Bhattad, Aged About 84 Years, R/o. Ganjpara, Durg, Tahsil & District Durg, Chhattisgarh.
2. Sanjay Bafna, S/o. Late Fulchand Bafna, Aged About 45 Years, R/o. Malviya Nagar, Durg, Tahsil & District Durg, Chhattisgarh.

---- Respondents

For Appellants : Mr. T.K.Jha, Advocate

For Respondent No.1 : Mr. Ashish Surana, Advocate

Hon'ble Shri Justice Goutam Bhaduri

C.A.V. Judgment

26.11.2018

1. The instant appeal is against the judgment and decree dated 08.05.2018 passed by the Court of Fourth Additional District Judge, Durg, in Civil Suit No.006446-A/2012 whereby the decree of ejectment and arrears of rent has been passed.

2. During the course of admission, this fact was not put to dispute that respondent No.1/plaintiff has attained the age of 92 years. Considering the age of the respondent/ plaintiff, the appeal is finally heard with the consent of the parties.

3. Brief facts, in this case, are that, a suit was filed by Smt. Kamla Bai Bhattad against (i) Smt. Sundar Bai W/o. Late Fulchand Bafna (ii) Sanjay Bafna, S/o. Late Fulchand Bafna (iii) Ajay Bafna, S/o. Late Fulchand Bafna & (iv) Hukumchand Bafna. During the course of trial, Smt. Sundar Bai died as such Sanjay Bafna, Ajay Bafna & Hukumchand Bafna remained as defendants.

4. According to the plaintiff, the plaintiff owns a superstructure which is comprised over Plot No.18/1 & Plot No.9 recorded in Nazul sheet No.3/B admeasuring 6960 sq.ft. at Ganjpara, Durg. The plaintiff Kamla Bai Bhattad pleaded that alongwith her, son of her sister namely Ravindra @ Ravi resides who looks after the plaintiff and her properties. The defendant Smt. Sundar Bai was wife of Fulchand Bafna and defendant No.1 & 2 Sanjay Bafna & Ajay Bafna were sons. The defendant No.3, Hukumchand Bafna, was relative of Fulchand Bafna and was working as associates alongwith Fulchand Bafna with his company. The plaintiff stated that the suit property, which comprised of five rooms was obtained by Fulchand Bafna to open his office in the year 1960 and the rent was paid and increased according to the mutual settlement and the last rent was payable of Rs.1700/- per month. The plaintiff stated that during the lifetime of original tenant Fulchand Bafna, the tenant agreed that in case of need, if expressed by the landlord, the vacant possession of the property would be handed over to the plaintiff landlord. After death of Fulchand Bafna in the year 2009, the defendants were in occupation of the suit property being the legal heirs of late Fulchand Bafna. It was stated that after death of Fulchand Bafna, status of legal heirs was that of tress passer and the defendants have not paid any rent to the landlord after 2009, therefore, on 19.11.2011 a registered notice

was served to the defendants to get the premises vacated and arrears of rent for 26 months from October, 2009 to Dec. 2011 was called for. Despite that, neither the vacant possession was given nor the suit property was vacated.

5. The plaintiff further pleaded that Ravindra Kumar @ Ravi for whom the premises was needed is distributor of Dinshaw Ice-cream and he was required to open Godown & Office inside the city for which the company was pressurising Ravindra Kumar. Therefore, the plaintiff wanted to vacate the suit premises for his legal heir/ dependent to open the Office & Godown. Further pleaded that except the suit premises, the plaintiff do not have any other premises available which is suitable to open the business. Further pleaded that Ravindra Kumar @ Ravi for whom the premises was needed is carrying on the Godown on rent at Rs.9000/- and he was asked to vacate the Godown by the said landlord, as such, the plaintiff was in need of the suit premises for his legal heir/ dependent. Further stated that rent of the premises was Rs.1700/- per month, which was due from October, 2009 and for 26 months rent of Rs.44,200/- was due and after receipt of the notice, the defendant had tendered the amount of Rs.40,000/- which the plaintiff received, however, the entire amount of rent was not paid and 4,200/- remained as arrears. It was stated that despite several requests and reminders, the defendants failed to vacate the premises, as such, Ravindra Kumar @ Ravi for whom the premises was needed, if the agency is withdrawn on the ground that he has no premises in the city, he would be rendered jobless. Therefore, the vacant premises for the bonafide need and the arrears of rent was prayed for.

6. The defendants/ appellants contended that Ravindra @ Ravi is not the family member of the plaintiff. It was also stated that he is not dependent on the plaintiff and neither he is the dependent nor legal heir of the plaintiff. It was stated that the plaintiff has suppressed the fact that she is the owner of the firm Mangni Ram Khushal Chand Battad and had sold the part of the property after filing the suit for ejectment, therefore, need actually do not exist. Further pleaded that Ravindra Kumar @ Ravi for whom the premises was asked for is son of sister of the plaintiff, therefore, for his need, the premises cannot be asked to be vacated. It was stated that the plaintiff has failed to prove the fact that in which capacity Ravindra Kumar @ Ravi looking after the premises of the plaintiff and the rent was increased from time to time and actually yearly rent was fixed at Rs.20,000/-. Further stated that the defendants are in possession of the suit property being the legal heir of Fulchand Bafna and after death of Fulchand Bafna, the plaintiff agreed to continue the tenancy, as such, they were in occupation of the suit property as tenant thereof. Further stated that when the notice was served to vacate the premises, it was duly replied and by such notice tenancy was not terminated. Further contended that the payment of rent was yearly and the entire rent was paid without any dues and lastly on 14.12.2011 an amount of Rs.40,000/- was paid, therefore, having accepted the rent, the occupation of the defendants/appellants cannot be said to be that of a tress passer or illegal. On such ground, dismissal of the suit was pleaded.

7. Learned Court below on the basis of the pleading of the parties framed five issues and held that the plaintiff is entitled to receive Rs.7600/- as arrears of rent and further held that plaintiff is entitled

to Rs.1700/- per month as damages till the possession is delivered. The Court further held that the plaintiff is entitled to get the premises vacated for the bonafide use of Office & Godown thereby decreed the suit in favour of the plaintiff. Being aggrieved by such judgment & decree, the instant appeal.

8. Learned counsel for the appellants would submit that there is no dispute about the fact that relation of landlord and tenancy exists in between the parties. It is further stated that the bonafide need was projected for son of the sister of the plaintiff and the son of the sister would not be covered under the definition of family under the C.G. Accommodation Act, 1961. Reliance was placed on ***AIR 1991 MP 90*** and submits the definition of 'members of the family' would not include the son of the sister. Further it is stated that as per the defendant statement, there cannot be any arrears as the plaintiff has refused to accept the rent when tendered and Rs.40,000/- when was sent it was accepted and the tender of the rent was made before the notice sent by the plaintiff was received. It is stated that the original tenant was Fulchand Bafna and the LRs were Sanjay Bafna & Ajay Bafna whereas Hukumchand Bafna was running the office of Fulchand Bafna, therefore, the status of the defendants/ appellants cannot be stated to be that of tress passer.

9. Per contra, learned counsel for the respondent No.1/plaintiff submits that admittedly the arrears of rent was Rs.44,200/- as after death of Fulchand Bafna the legal heirs stopped payment of rent, therefore, the notice when was served and an amount of Rs.40,000/- was tendered wherein Rs.4,200/- still remain unpaid. It is further stated that the decree for arrears of Rs.7600/- is rightly

passed as from the date of suit till recovery, damages of Rs.1700/- per month has been awarded for use of premises. It is stated that the suit was filed on 13.03.2012, therefore, on the date of the suit, the arrears have to be considered. It is stated that if any suit is filed then the defendant is obliged to follow the provisions of Section 13(1) of the C.G. Accommodation Control Act, 1961 and it is stated that the facts would show that even after filing of the suit though the defendant was obliged to deposit the rent in the Court within the stipulated time, the same was not deposited. He referred to the statement of PW-1 & DW-1 and would submit that the evidence is on record to show that son of the sister of the plaintiff was completely dependent as has been shown as common parlance as “waris”, therefore, the definition of the 'family members' cannot be narrowed down. It is stated that the order is well merited which do not call for any interference.

10. Heard learned counsel for the parties at length, perused the documents and record.

11. The plaintiff Smt. Kamla Devi Bhattad stated that she is the owner of the Plot No.18/1, Sheet No.3/B, Plot No.9 admeasuring 6960 sq.ft. wherein superstructure exists. It is stated that Ravindra Kumar @ Ravi is the son of her sister and he has been given to look after and manage the entire immovable property. She further stated that Ravindra Kumar resides with her for 42-45 years at Durg and after her marriage, her wife & children are also residing alongwith her, therefore, she has declared Ravindra Kumar as her waris i.e. legal heir. It is further stated that the suit property was leased out to late Fulchand Bafna in the year 1960. She further stated that after death of Fulchand Bafna, the defendants were in

possession. The defendant Hukumchand Bafna in his statement has stated that the office of Bafna & Company is in the house of the plaintiff Kamla Bai and after death of Fulchand Bafna in 2009, Bafna & Company were running their business and they were liable to pay the rent.

12. The suit was filed for bonafide need of Ravindra Kumar @ Ravi by plaintiff Kamla Bai Battad. She stated that she is aged 90 years and Ravindra Kumar @ Ravi is son of her sister and Ravindra was carrying on the distributorship of Dinshaw Ice-cream at Durg. She further stated that in order to open the Godown & Office inside the city, Dinshaw Company has asked Ravi to open the Office & Godown, therefore, the suit premises was required for Office & Godown for Ravindra Kumar @ Ravi. The DW-1 at para 28 admitted this fact that plaintiff is widow and is issue-less. He further admitted the fact that her age at the time of statement was recorded as 90-92 years. He further admitted the fact that the son of sister of the plaintiff resides with the plaintiff i.e. Ravindra Kumar and also admitted the fact he carries on his business. He further admitted the fact that Ravindra Kumar @ Ravi, son of sister, looks after the plaintiff for 30-32 years. The averments of the plaintiff that Ravindra Kumar @ Ravi was declared waris i.e. legal heir has not been rebutted by any evidence, instead the defendants admitted the fact that the plaintiff is completely dependent and is looked after by Ravindra Kumar @ Ravi for whom the need was projected.

13. Section 2(e) of the Chhattisgarh Accommodation Control Act, 1961 *(for short "the Act of 1961")* defines the member of the family, which reads as under :

> *“2(e) "member of the family"* in case of any person means the spouse, son, unmarried daughter, father, grandfather, mother, grandmother, brother, unmarried sister, paternal uncle, paternal uncle's wife or widow, or brother's son or unmarried daughter living jointly with, or any other relation dependent on him;

14. Reliance as placed by appellant in ***AIR 1991 MP 90***, that sister's son can not be taken to be the member of the family. After going through the said case law, the ratio would show that sister's son was not included as member of family was arrived at different context and background. The ratio to arrive at such decision supra was arrived at by definition of family along-with the fact the dependency on plaintiff was not denied in such case. By considering the definition coupled with the fact in that case it was held that sister's son was not dependent on the plaintiff and he cannot be included as member of the family. Whereas, in the instant case, the categorical evidence is on record that the plaintiff is completely dependent on Ravindra Kumar @ Ravi apart from it she do not have any issue. She resides with her sister's son who also looks after the properties. The age of the plaintiff i.e. 90-92 years will also have significance, therefore, if she makes a statement, which also admitted by the defendants that she is dependent and looks after by Ravindra @ Ravi her sister's son, the definition of member of the family cannot be given narrow meaning in such case.

15. As has been held in case of ***K.V. Muthu v. Angamuthu Ammal*** reported in ***AIR 1997 SC 628,*** the definition of son is a flexible term and may not be limited to the direct descendant. Its true meaning, will depend upon the context in which it is used. Even illegitimate son may be treated as legitimate, as reference of

Section 16 of Hindu Marriage Act finds place. Likewise, a “foster child” need not be the real legitimate child of the person who brings him up. He is essentially the child of another person but is nursed, reared and brought up by another person as his own son.

16. The definition as appears in Section 2(e) of the Act of 1961, the member of the family may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the legislature.

17. The Supreme Court by interpreting their definition in *K.V. Muthu (supra)* has laid down as under :

> “11. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, It should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.
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> 12. Where the definition or expression, as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the Section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied.”

18. Section 2 of the Act of 1961 opens with the word that “in this Act, unless the context otherwise requires, therefore, applying the principles and ratio laid down in *AIR 1980 SC 214*, it was held that a definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found

therein. The opening clause of Section 2 of the principal Act itself suggests that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires.

19. The Supreme Court has held in *K.V. Kuthu (supra)* that “family” signifies the collective body of persons living in one house or under one head or manager or one domestic government. In its restricted sense, “family' would include only parents and their children. It may include even grand-children and all the persons of the same blood living together. In its broader sense, it may include persons who are not connected by blood depending upon the context in which the word is used. There is a consensus among the High Courts in India that the word “family” is a word of great flexibility and is capable of different meanings.

20. Furthermore, the definition of Section 2(e) of the Act of 1961 also takes within the sweep the word any other relation dependent on him. In the context of this fact, the plaintiff when contended that she is living together with Ravindra Kumar @ Ravi, she has no issue and both are dependent on each other as are being looked. Furthermore, the pleading and evidence remains unrebutted that for benefit of each other the plaintiff Kamla Bai Bafna had held the property for Ravindra Kumar and likewise Ravindra Kumar looks after the property. Therefore, in view of the aforesaid evidence, the definition of the family cannot be given narrow meaning as it would defeat the very purpose and object of the Act itself.

21. The Supreme Court further while explaining the word “Foster Son” has held and referred to the Oxford Dictionary that “Foster Son” is defined as “one brought up as a son though not a son by birth.”

The word “Foster” in the same dictionary, is indicated to mean, to supply with food; to nourish, feed, support; to bring up with parental care; to nurse, tend with care to grow. The definition therefore indicate that a “Foster Child” need not be the real legitimate child of the person who brings him up. He is essentially the child of another person but is nursed, reared and brought up by another person as his own son. It was further held that a child is brought up from the infancy as the own son by that person who loves that child as his own, nourishes and brings him up, looks after his education in the school, college or university and bears all the expenses, such child has to be treated as the son of that person particularly if that person holds the child out as his own. Care, therefore, in rearing up the child need not always be parental. It can be even that of a “Foster Father”. In such a situation, the son so brought up would be the “Foster Son” of that person and since the devotion with which he was brought up, the love and care which he received from that person were like those which that person would have given to his real son, the “Foster Son” would certainly be a member of the family.

22. Therefore, in the light of the aforesaid principles and the evidence on record, Ravindra Kumar @ Ravi who is son of sister of the plaintiff can be definitely be adopted to be the member of the family of the plaintiff so as to include within the definition of Section 2(e) of the Act of 1961 and further under Section 12(1)(f) of the Act of 1961 since for his benefit only the property is held by plaintiff.

23. With respect of the bonafide need the plaintiff Smt. Kamla Bai had stated that Ravindra Kumar @ Ravi carries on the business of

distributorship of Dinshaw Ice-cream for which he needs the Godown & Office inside the city, therefore, need of the suit premises was projected. This fact was also admitted by the defendant that the Ravindra Kumar @ Ravi is carrying business of distributorship of whole sale Ice-cream at Durg. The plaintiff stated that she do not have any other premises available with her within the Durg city to open the business and there is no evidence to rebut the same. On the alternate, DW-1 has stated that Ravindra Kumar @ Ravi is carrying on his business and has taken a Godown on rent from another person.

24. Another statement of one Arun Kumar Sahu, PW-2, who is worker in the Dinshaw Dairy Foods Pvt. Ltd. stated that distribution of the Ice-cream was being carried through Ravindra Kumar @ Ravi. He further stated that the distribution are carried out from the Godown at Chikhli Naka, Damdha Road, Durg, for which the rent is Rs.20,500/- and Dinshaw Dairy Food has asked the distribution agency to open a Godown in the city, as against this Ravindra Kumar @ Ravi has asked for some time. Therefore, if the evidence of the witness are read together, it would show that the plaintiff was able to prove that the suit premises was required under Section 12(i)(f) of the Act of 1961 to start the business and plaintiff did not have any alternative accommodation to start the business.

25. The plaintiff further contended that except the suit premises, the plaintiff do not have any other premises in her occupation whereas the defendant has enough immovable properties at the city at Durg. Though in the cross-examination, she was confronted that in the ground floor of the premises three part has been given on rent

one part was given to Fulchand Bafna and in one part Jagdish Sharma was residing and in one part Ajay Sankhla is running his office. The said averments and the evidence even are accepted, it will not lead to non-suit the plaintiff. It is a settled principles that the plaintiff is the sole abiter to chose his/her premises, he/she cannot be compelled to go for a particular premises to get it vacated. The defendants have also not able to prove any fact that the plaintiff has any alternative suitable accommodation to start the business for which the need was projected.

26. It has been held by Hon'ble the Supreme Court in decisions reported in ***(2008) 8 SCC 497*** in case of ***Deep Chandra Juneja v. Lajwanti Kathuria (Smt) (Dead) Through L.Rs.*** and ***2010 AIR SCW 1265*** in case of ***Uday Shankar Upadhyay v. Naveen Maheshwari,*** that the landlord is the best judge of his requirement and the Courts have no concern to dictate the landlord so to how and in what manner he/she should live or which floor/shop he should use for his business. It is for the landlord to decide. Further as has been held by Hon'ble the Supreme Court in case of ***Mohd. Ayub & Another v. Mukesh Chand*** reported in ***(2012) 2 SCC 155***, the Court cannot direct the landlord to do a particular business against his will. Further, in case of ***Anil Bajaj & Anr. v. Vinod Ahuja*** reported in ***2014 (6) SCALE 572*** the High Court held that it is perfectly open to the landlord to choose a more suitable premises for carrying on the business by her son and that the respondent cannot be dictated by the appellant as to from which shop her son should start the business from. Therefore the need as projected as was upheld by the Court below cannot be faulted.

27. Now coming with the finding of arrears of rent, the suit was filed on 13.03.2012. The plaintiff in her statement has admitted the fact that a notice Ex.P-3 was served. Perusal of Ex.P-3 would show that arrears of rent from October 2009 at the rate of Rs.1700/- per month amounting to Rs.44,200/- for 26 months was claimed. Thereafter, in the cross-examination, the plaintiff at para 17 admitted the fact that she has received a cheque of Rs.40,000/-. Consequently, it leads to show an amount of Rs.4200/- was still remaining till 31.12.2011. The suit was filed on 13.03.2012. The finding of the Court that after the filing of the suit, the defendant has not deposited any rent before the Court appears to be correct from records.

28. As has been held in case of ***Ashok Kumar Mishra & Another v. Goverdhan Bhai (Dead Through Legal Representatives) & Another*** reported in ***(2018) 12 SCC 533***, the tenant must during pendency of the suit/appeal make payment of rent within one month of service of writ of summons or notice of appeal. Further held that if Court determines time-frame then tenant has to pay within such time-frame or else pay rent by 15th of every month till date of decision in the suit/appeal/proceedings as the case may be but when the tenant turned out to be defaulter, courts do not have power to condone defaults in payment of rent.

29. Section 13 of the Act of 1961 for the purpose would be relevant, which reads as under :

> **13. When tenant can get benefit of protection against eviction.** - [(1) On a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in Section 12 or in any appeal or any other proceeding by a tenant against any decree or order for his eviction, the

tenant shall, within one month of the service of writ of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant, as the case may be, or within such further time as the Court may on an application made to it allow in this behalf, deposit in the Court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made; and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be.

30. The Supreme Court in *Ashok Kumar Mishra (supra)* at para 9, 13 & 14 has held as under, which would be relevant in this case.

"9. It is obvious from the aforesaid provisions that the tenant must during the pendency of the suit/appeal make payment of rent within one month of the service of writ of summons or notice of appeal or within such further time such Court may allow in this behalf. Further, he must thereafter, continue to deposit or pay rent by 15th of each succeeding month till the decision of the suit, appeal or proceedings, as the case may be.

13. We are of the view that on a plain reading, this provision protects a tenant from eviction if a tenant makes deposit/payment as required by Section 13(1) or 13(2) of the Act. In other words, if the tenant has complied with the provisions of Sections 13(1) and 13(2) in the matter of making payment, he is protected from eviction. It must be remembered that the provisions of Section 13 of the Act shied a tenant from eviction if the tenant regularly pay rent after the suit is filed.

14. Accordingly, it provides a locus poenitentiae to the tenant. Section 13(5) of the Act reiterates the protection by

stating that if the tenant makes payment post-suit in accordance with the provisions of Section 13(1) and 13(2) of the Act, he shall not be liable for eviction. This section does not confer the power on the court to condone the defaults in payment of rent after the suit is filed. It is, therefore, not possible for us to accept this contention. In the circumstances, the impugned judgment of the High Court is set aside."

31. Since the fact would suggest that after filing of the suit, the plaintiff has not deposited any arrears as required under Section 13, therefore, the protection under Section 13(5) of the Act of 1961 would not be available to the plaintiff and any subsequent payment would not allow the default to be condoned. Consequently, the arrears of rent as has been arrived at also cannot be faulted.

32. In a result, after over all appreciation of facts and close scrutiny of evidence, I am of the opinion that the judgment & decree of eviction by the trial Court do not require any interference by this Court. The appeal has no merit and accordingly it is dismissed.

33. The cost of the suit and that of the appeal shall also be borne by the appellants. Decree be drawn accordingly. The judgment and decree of the trial Court is affirmed apart from the fact that the appellants shall be liable to pay the cost.

Sd/-
(Goutam Bhaduri)
Judge

Ashok