

**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal No. 267 of 2015**

Shyam Agrawal (Garg) Gupta Textiles / Shyam Saree, 75, New Cloth Market, Pandri, Raipur, Civil And Revenue District Raipur, Chhattisgarh
.....Defendant

---- Appellant

Versus

- Rajkumar Agrawal S/o Sagarmal Agrawal, R/o Ravi Nagar, Raipur, Tahsil And District Raipur, Chhattisgarh.....Plaintiff

---- Respondent

For Appellant : Mr. B. P. Sharma along with Ms. Anuja Sharma, Advocate
For Respondent : Mr. Prafull N. Bharat, Sr. Advocate, along with Mr. Mayank Chandrakar, Advocate

Hon'ble Shri Justice P. Sam Koshy

Judgement On Board

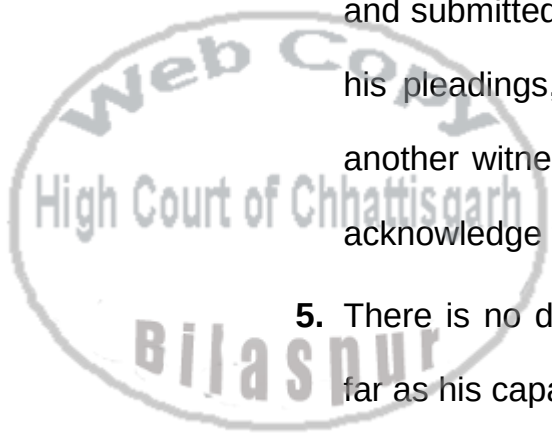
11.10.2022

1. The present is a defendant's first appeal under Section 96 of the Code of Civil Procedure, 1908. The challenge in the present first appeal is to the judgment and decree dated 21.08.2015 passed by the 4th Additional District Judge, Raipur in Civil Suit No.112-A/11. Vide the impugned judgment and decree the trial Court has allowed the Suit for eviction, arrears of rent and damages, wherein the trial Court has directed the defendant to provide the vacant possession of the suit shop within a period of two months in addition, to pay rent and damages to the tune of Rs.24,500/- with interest @ 6% per annum from the date of filing of the Suit till the amount was released.
2. The brief facts relevant for adjudication of the present first appeal are that the dispute involved in the present appeal is a landlord & tenant



dispute. The suit property is a shop located at Pandri Cloth Market, Raipur i.e. Shop No.75 measuring 14 x 21 = 294 square feet.

3. The appellant-defendant is the tenant and the respondent-plaintiff is the landlord. For convenience sake, henceforth the parties would be referred as plaintiff and defendant.
4. It is said that the plaintiff had purchased the property from the Raipur Development Authority and thereafter had given the suit shop on rent to the defendant. Since there was a default in payment of rent by the defendant, the plaintiff instituted a suit for eviction, arrears of rent and damages under Section 12 (1) (a) & (f) of the Chhattisgarh Accommodation Control Act, 1961. The defendant entered appearance and submitted his written statement. Issues were framed. In support of his pleadings, the plaintiff adduced his evidence and also examined another witness namely Anand Pandey, an owner of nearby shop to acknowledge the ownership of plaintiff over the suit shop.
5. There is no dispute rather there is an admission by the defendant so far as his capacity of being the tenant in the suit shop.
6. Subsequent to the plaintiff closing evidence on his part, the defendant in spite of numerous opportunities being provided for adducing evidence did not think it proper to adduce any evidence. Finally, his right was closed and the suit was decided on the basis of the pleadings and the available evidence i.e. the evidence on behalf of the plaintiff. The suit was finally decreed vide impugned judgment dated 21.08.2015 directing the defendant to vacate the premises within a period of two months and further to pay rent and damages to the tune of Rs.24,500/- with interest @ 6% per annum from the date of filing of the suit onwards.
7. It is this judgment and decree dated 21.08.2015 that is assailed by the



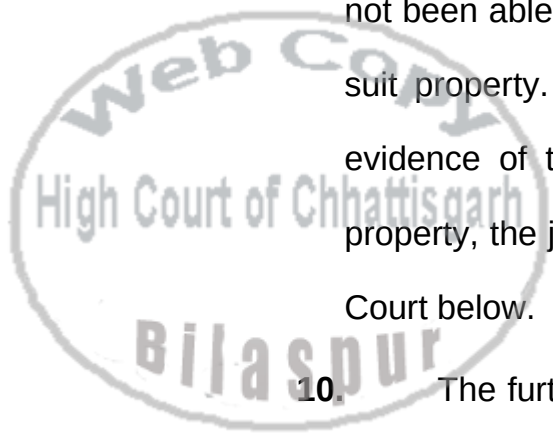


appellant-defendant in the present appeal.

8. By virtue of an interim order granted by this Court on 16.10.2015, the eviction part of the decree was stayed and the appellant-defendant continues to remain in occupation in the said suit shop.

9. The primary challenge to the impugned judgment and decree by the appellant is on the ground that the learned Court below has not properly appreciated the fact that the plaintiff has not been able to establish his case both under Section 12(1)(a) as also under Section 12(1)(f) of the Chhattisgarh Accommodation Control Act before the Trial Court. The contention of the learned counsel for appellant is that the Court below has failed to appreciate the fact that the plaintiff has not been able to convincingly establish his ownership and title over the suit property. According to the appellant, in the absence of strong evidence of the plaintiff of his being the owner/landlord of the suit property, the judgment and decree could not have been passed by the Court below.

10. The further contention of the appellant-defendant is that it was a specific stand taken by the defendant before the trial Court that the property was taken on rent by the defendant from one Sagarmal Agrawal and not from the plaintiff and there was no claim at any point of time made by Sagarmal Agrawal both in respect of arrears of rent as also for eviction of defendant from the said property. The appellant further contended that the plaintiff has suppressed material facts before the Court below both in his pleadings and also in his evidence in respect of the plaintiff having other properties in his name. Further that those properties were not suitable for him for his bonafide need. According to the appellant, if the plaintiff has not disclosed the availability of other properties and the same being not suitable, it has

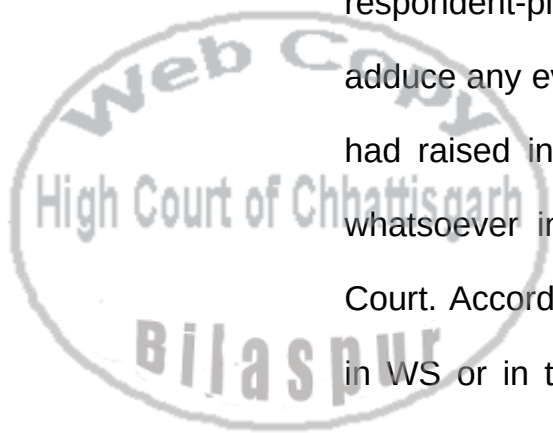




to be presumed that the plaintiff has an alternative accommodation available for his bonafide need. According to the appellant, the whole shopping complex including the suit shop is one which is owned by the Raipur Development Authority. It is only the lease right which has been executed in favour of the plaintiff. That by virtue of the lease deed the exclusive title right and ownership cannot be claimed to be that of the plaintiff's. This fact also has not been properly appreciated by the Trial Court. For all these grounds, the appellant prayed for setting aside of the impugned judgment and decree and for dismissing the plaint filed by the plaintiff.

11. Per contra, Shri Prafull N. Bharat, senior advocate appearing for respondent-plaintiff contended that once the defendant has failed to adduce any evidence in respect of his defence and contentions that he had raised in WS, the defendant does not have any right available whatsoever in challenging the finding of fact arrived at by the trial Court. According to the learned counsel, except for the bald averment in WS or in the memo of appeal and in the absence of any cogent strong material or evidence before the trial Court, the submissions of the defendant would not have any force to sustain. It was the further contention of the learned counsel for plaintiff that the mere fact that the defendant in the past had paid rent to the plaintiff and also in the course of litigation before the Trial Court had paid rent to the plaintiff proves the fact that he accepts the plaintiff to be the landlord of the said premises. That even pending the Suit before the Trial Court, the defendant had moved an application before the trial Court seeking permission to deposit rent which too was accepted and this would establish the plaintiff being the landlord.

12. According to the counsel for respondent-plaintiff, the judgment





and decree that has been passed by the Trial Court was only invoking the provisions of 12(1)(f) of the CG Accommodation Control Act. Since there was a categorical averment made by the plaintiff in the plaint as also in his evidence so far as the bonafide need is concerned, the burden of proof stood shifted upon the defendant to firstly disprove the claim of the plaintiff and also to establish that he has an alternative accommodation available suitable for his bonafide need. This according to the counsel for plaintiff, the defendant has miserably failed and therefore there is hardly any scope of interference left for this Court in the present first appeal. According to the plaintiff, there is a proper lease deed executed in his favour by the Raipur Development Authority. He has been paying property tax for the said shop to the Municipal authorities. He has also been declared and considered as the owner for the purpose of affixing the electricity meter at the said shop and all these are not in dispute. Therefore, the ownership stands established and the fact that the plaintiff is the landlord cannot be denied. Thus, learned counsel for the plaintiff prayed for rejection of the first appeal.

- 13.** Having heard the contentions put forth on either side and on perusal of records, what is necessary at this juncture to take note of is the appreciation of the definition of “Landlord” and “Tenant” as is defined under Sections 2 (b) & 2 (i) of the aforementioned Act of 1961. For ready reference, both these definitions are reproduced hereinunder:

2(b) “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 or for the benefit of, any other person or as a trustee, guardian or receiver for any other



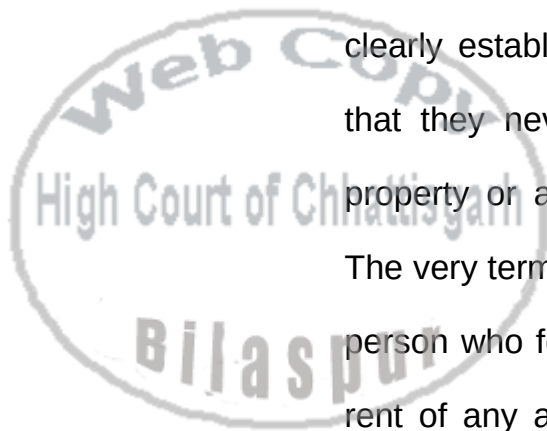
person or who would so receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord.

2(i) “Tenant” means a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express or implied, would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also, any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made.

14. The plain reading of the aforesaid definition of “landlord” would clearly establish that the law makers in their wisdom was very clear that they never intended the landlord to be the title holder of the property or a person having exclusive title rights over the property. The very term of “landlord” in its definition begins with a reference to “a person who for the time being is receiving or is entitled to receive the rent of any accommodation”. The said definition further closes with another reference “includes every person not being a tenant who from time to time derives title under a landlord.”

15. The aforesaid term by itself has a wide connotation and it cannot be given a strict interpretation or else the law makers would have been specific in this regard.

16. In the facts of the present case, the defendant accepts his status of a tenant. He accepts of having paid rent in the past to the plaintiff even during the pendency of the litigation. To add to the aforesaid admitted factual matrix the defendant also does not dispute that the property has been purchased by the plaintiff from Raipur Development





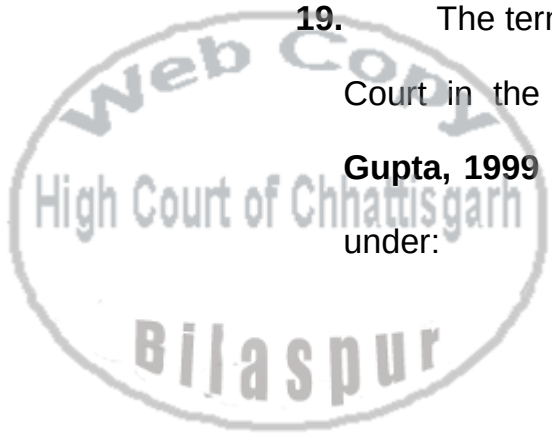
Authority by way of sale/lease deed.

17. The aforesaid facts by itself are sufficient enough to reach to the conclusion that the plaintiff is the person who has a substantial right over the suit shop which stands registered in his name with the Raipur Development Authority. These facts are also sufficient enough to bring the plaintiff within the ambit of the definition of landlord as is defined under Section 2 (b) of the Act of 1961 reproduced in the preceding paragraphs.

18. In view of the aforesaid facts and circumstances of the case, the contentions of the defendant that the plaintiff cannot be treated as a landlord does not have any force of law to sustain.

19. The term “bonafide” has been dealt with by the Hon’ble Supreme Court in the case of **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, 1999 (6) SCC 222** where in paragraph-13 it has been held as under:

“13. Chambers 20th Century Dictionary defines bonafide to mean “in good faith : genuine”. The word “genuine” means “natural: not spurious: real: pure: sincere”. In Law Dictionary, Mozley and Whitley define bonafide to mean “good faith, without fraud or deceit”. Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the





landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited .for the purpose; the court would not in such a case thrust its own wisdom upon the choice Of the landlord by holding that not one. but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.



20.

Further, dealing with the issue of bonafide need the Hon'ble

Supreme court in the case of **Mohd. Ayub and another Vs. Mukesh**

Chand, 2012 (2) SCC 155, in paragraphs 15 & 16 has held as under:

“15. It is well settled the landlord's requirement need not be a dire necessity. The court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start. It was wrong on the part of the District Court to hold that the appellants' case that their sons want to start the general merchant business is a pretence because they are dealing in eggs and it is not uncommon for a Muslim family to do the business of non-vegetarian food. It is for the landlord to decide which business he wants to do. The Court cannot advise him. Similarly, length of tenancy of the respondent in the circumstances of the case ought not to have weighed with the courts below.

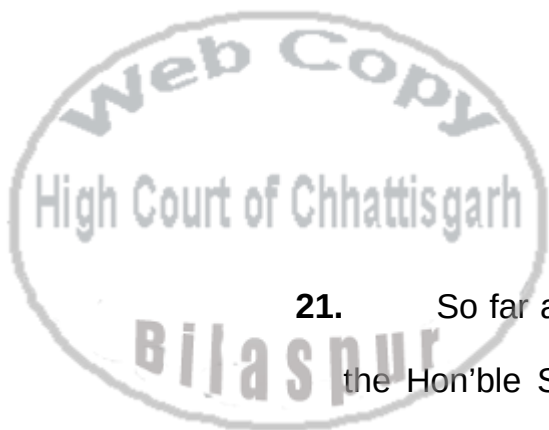


16. We also find that the courts below were swayed by the fact that the financial position of the appellants was better than the respondent. The District Court has erroneously gone on to observe that the appellants can buy another building and start business. It has also observed that the appellants had purchased the building to make profit. In this connection we may usefully refer to the judgment of this Court in Bhimanagouda Basanagouda Patil where the District Judge decided the issue of comparative hardship in favour of the tenant solely on the basis of affluence of the parties. This Court observed that if this is the correct approach then an affluent landlord can never get possession of his premises even if he proves all his bona fide requirements. This Court further observed that the fact that a person has the capacity to purchase the property cannot be the sole ground against him while deciding the question of comparative hardship. If the purchase is pursuant to a genuine need of the landlord the said purchase has to be given due weightage unless, of course, the purchase is actuated by collateral consideration. This Court rejected the High Court's finding that the landlord had secured the premises apparently in a game of speculation. Somewhat similar observations are made in this case by the District Court which in our opinion are totally unsubstantiated."

21. So far as the title of the landlord in eviction matter is concerned, the Hon'ble Supreme court in the case of **Kasthuri Radhakrishnan and others Vs. M. Chinnayan and another, 2016 (3) SCC 296** in paragraph-28 referring to an earlier decision of the Hon'ble Supreme Court has held as under:

"Similarly, so far as the scope and nature of inquiry, which is required to be undertaken to examine the title of the landlord in eviction matter is concerned, it also remains no more res integra and stands settled in Sheela v. Firm Prahlad Rai Prem Prakash, (2002) 3 SCC 375. Justice R.C.Lahoti (as His Lordship then was) speaking for the Bench held that: (SCC pp.383-84, para 10)

"10. ...the concept of ownership in a landlord-tenant litigation governed by rent control laws has to be distinguished from the one in a title suit. Indeed, ownership is a relative term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is





entitled in his own legal right, as distinguished from for and on behalf of someone else to evict the tenant and then to retain control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit.”

22. The aforesaid judgment in the case of Kasthuri Radhakrishnan (supra) demolishes the entire arguments of the leaned counsel for the appellant-tenant.

23. As regards the contention of the appellant-defendant in respect of the plaintiff having an alternative accommodation, the Hon'ble Supreme Court in the case of Shiv Sarup Gupta (supra) in paragraph-14 has held as under:



“14. The availability of an alternate accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to bonafides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the Court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of nonavailability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available than the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in



comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.”

24. What is necessary at this juncture to take note of is the fact that though the defendant has raised a ground of the plaintiff having an alternative accommodation, there is no iota of evidence whatsoever either in his pleadings or by way of evidence with which it could be established. In the absence of which, the said contention also would not be sustainable. A bare bald averment in WS or in the memo of appeal by itself would not be sufficient to infer that the landlord has an alternative accommodation.

25. For all the aforesaid reasons, this Court does not find any merits in the instant first appeal. Hence, affirming the impugned judgment and decree of the trial Court the First Appeal is accordingly rejected.

26. The Registry is directed to draw a decree accordingly.

**Sd/-
(P. Sam Koshy)
Judge**