

(2008) 04 CHH CK 0019
In the Chhattisgarh High Court
Case No : C.R. No. 2203 of 1997

Abdul Sattar Kasambhai (Died) and Others	APPELLANT
Vs	
Smt. Kalawati Devi (Died) through and L. Rs.	RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 23D, 23E, 23J

Citation : (2008) 04 CHH CK 0019

Hon'ble Judges : Dilip Raosaheb Deshmukh, J

Bench : Division Bench

Advocate : R.P. Tripathi with Mr. Sunil Sahu, for the Appellant; Prashant Mishra with Mr. H.S. Patel, for the Respondent

Judgement

Dilip Raosaheb Deshmukh, J.—This is tenants revision u/s 23-E of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter referred to as "the Act, 1961") against the order of eviction dated 22.10.1997 passed by the Rent Controlling Authority, Raigarh (henceforth the "R.C.A.") in case No. 3/A-90 (D/92-93).

2. The following facts are not disputed.

Smt. Kalawati Devi who initiated the proceedings u/s 23-A of the Act 1961 against Abdul Sattar, the applicant/tenant was the widow of Kanhaiyalal. Shankar Lal is the son of Smt. Kalawati. Hemant is the son of Shankar Lal. The applicant herein is a tenant in the suit accommodation No. 26/1 situated at Street No. 43, Plot No. 168/3, Ward No. 8 in Raigarh (henceforth "the accommodation") which was let out for non-residential purpose. Kanhaiyalal had instituted Civil Suit No. 79-A/78 before the 1st Civil Judge Class-2, Raigarh for eviction of the applicant herein which was withdrawn on 24.02.1981 by Kanhaiyalal upon a compromise relating to enhancement of rent from Rs. 50/- to Rs. 65/-. In the year 1985, Kanhaiyalal instituted another Civil Suit No. 241-A/1985 (later numbered as Civil Suit No. 90A/ 1990) for eviction of the applicant herein on the ground of bona

fide requirement for non-residential purpose. This suit (Civil Suit No. 90A/1990) was dismissed on 22.06.90 by 3rd Civil Judge Class-2, Raigarh. No appeal was preferred.

3. It is also not in dispute that upon death of Kanhaiyalal on 3.7.1990, his widow Smt. Kalawati Devi initiated proceedings u/s 23-A of the Act, 1961 for eviction of the applicant/tenant on the ground of bona fide requirement for the purpose of starting business by her major son Shankar Lal. It is also admitted that Smt. Kalawati had instituted a suit for eviction of one Chandumal from a non-residential premises adjacent to the suit accommodation on the ground of bona fide requirement for non-residential purpose. During the pendency of the suit, Smt. Kalawati sold the tenanted non-residential premises to Chandumal by a registered sale deed. The suit instituted by Smt. Kalawati was subsequently dismissed in default. In the present proceedings, statement of Smt. Kalawati was recorded by the Commissioner appointed by the R.C.A. on 9.10.1994. After cross-examination of Smt. Kalawati by the counsel for the applicant/tenant was completed, counsel for Smt. Kalawati prayed before the Commissioner for re-examination of Smt. Kalawati for clarifying an ambiguity arising in paragraph 12 of her statement that she had no knowledge about the nature of the proceedings before the R.C.A. since it was completely taken care of by her grandson Hemant. An objection raised by the learned Counsel for the applicant was recorded by the Commissioner for being decided by the R.C.A. Subject to this, on being re-examined Smt. Kalawati, stated that the proceedings were initiated on the ground of the requirement not only for herself but also for her son. Learned Counsel for the applicant herein stated that he would not further cross-examine Smt. Kalawati till the objection raised by him before the Commissioner regarding the permission being granted to the counsel for Kalawati to re-examine her was not decided by the R.C.A. This objection was overturned by the R.C.A. on 19.11.1994. The R.C.A. permitted counsel for the applicant herein to re-cross examine Kalawati on the said statement by her. However, Kalawati could not be made available for further cross-examination. Kalawati besides her own statement examined her son Shankar Lal, grandson Hemant and a witness Pradeep Kumar Agrawal in support of her case. The applicant herein examined himself in rebuttal and led no other evidence. On 22.10.1997, the R.C.A. passed the impugned order granting eviction of the applicant herein. The applicant preferred this Revision on 9.12.1997. During pendency of the Revision Smt. Kalawati and Abdul Sattar died and their legal representatives were substituted.

4. Shri R.R Tripathi, learned Counsel for the applicants and Shri Prashant Mishra, learned Senior Advocate with Shri H.S. Patel were heard at length. I have perused the impugned order as also the record with utmost circumspection.

5. Chapter III-A of the Act. 1961 deals with eviction of tenants on the ground of bona fide requirement. Section 23-A of the Act. 1961 is a special provision enacted for eviction of the tenants on grounds of bona fide requirement of the landlord either for residential or for non-residential purpose. Sub-clause (a) of

this provision contains the ground for eviction for residential purpose of an accommodation let out for residential purpose and Sub-clause (b) contains the ground for eviction for non-residential purpose of an accommodation let out for non-residential purpose. An application u/s 23-A of the Act, 1961 can be filed only by a person who falls within the definition of landlord as given in Section 23-J of the Act, 1961. Section 23-D of the Act, 1961 lays down the procedure to be followed by the R.C.A. on grant of leave to the tenant to contest the application u/s 23-A of the Act, 1961 filed by the landlord. Sub-clause (3) of Section 23-D of the Act, 1961 which was substituted by an amendment w.e.f. 16.01.1985 reads as under:

(3) In respect of an application by a landlord it shall be presumed, unless the contrary is proved, the requirement by the landlord with reference to Clause (a) or Clause (b), as the case may be of Section 23-A is bona fide.

It is thus clear that in proceedings under Chapter III-A of the Act, 1961, on an application filed by the landlord u/s 23-A of the Act, 1961 for eviction of the tenant, upon adducing evidence by the landlord regarding bona fide requirement pleaded, it shall be presumed, unless the contrary is proved that the requirement by the landlord with reference to Clause (a) or Clause (b), as the case may be, of Section 23-A of the Act, 1961 is bona fide. In other words, a rebuttable presumption is raised by Sub-section (3) or Section 23-D of the Act, 1961 in the landlord's favour of his bona fide requirement which he has set up in the application. The proceeding before the R.C.A. is of summary nature and the practice and procedure of a Court of Small Causes has to be followed by the R.C.A. who shall, as far as possible, proceed with the hearing of the application from day to day. The departure of the legislature from the general rule of burden of proof in subclause (3) of Section 23-D of the Act, 1961 is deliberate as the law has, by adding a new Chapter III-A containing provisions from Section 23-A to 23-J of the Act, 1961 w.e.f. 16.08.1983, created a special provision for the benefit of a special class of landlords who fall within the definition of landlord given in Section 23-J of the Act, 1961. Persons included in the definition of landlord u/s 23-J of the Act, 1961 i.e. persons retired from service, a woman upon death of or divorce from husband or in the case of a government servant who is not entitled to government accommodation on his posting to a place where he owns an accommodation may require an accommodation bona fide for residential or non-residential purpose. In proceedings u/s 23-A of the Act, 1961 the burden of rebutting the presumption that the requirement set up by the landlord is bona fide is, therefore, heavily on the tenant.

6. Shri R.P. Tripathi, learned Counsel for the applicants herein raised a question of law that on death of Kanhaiyalal, his son Shankar Lal for whose need, the accommodation was sought to be evicted, became a co-owner of the accommodation with Smt. Kalawati, and therefore, where the accommodation was sought to be evicted for the bona fide requirement of co-owner Shankar Lal for starting his business, the proceeding u/s 23-A of the Act, 1961 initiated by

Smt. Kalawati was not maintainable and Shankar Lal, the co-owner of the suit accommodation could file a regular suit for eviction of the tenant. This contention deserves rejection at once, in the facts and circumstances of this case. As against the evidence led by Smt. Kalawati Devi that in a mutual partition that suit accommodation had fallen to her share and the house in Bhujji Bhawan Chowk fell to the share of Hemant (ground floor) and Shankar Lal (upper floor) which is wholly un rebutted, the tenant Abdul Sattar has categorically admitted in cross-examination that he never made any effort to find out in whose name the suit shop was recorded. He also did not make any effort to make any enquiry in this regard from the Sales Tax Department or the Shops and Establishment Department. He also admitted that he did not know whether the shop owned by Firm Mangal Chand Kanhaiyalal had fallen to the share of Hemant. He categorically admitted that besides the suit shop, Shankar Lal had no other shop. Thus in the light of the evidence adduced it is established that upon a mutual partition the suit accommodation had fallen to the share of Smt. Kalawati Devi. Being a widow, Smt. Kalawati Devi fell within the definition of landlord u/s 23-J of the Act, 1961 and was competent to file an application u/s 23-A of the Act, 1961 for eviction of the applicant/tenant.

7. The R.C.A. refused to countenance the contention of the tenant that Shankar Lal could do his business with his son Hemant in the shop at Bhujji Bhawan Square. It took into consideration the admission by the tenant that their family dealt in the business of tarpaulin. All the sons had after marriage separated and the tenant Abdul Sattar was doing business separately from his children. On the same analogy, the R.C.A was entirely justified in rejecting the tenant's argument that Shankar Lal could do business with Hemant at the Bhujji Chowk shop. More so in view of the fact that evidence was led by Smt. Kalawati to show that Shankar Lal and Hemant i.e. the father and son did not go along well after the marriage of Hemant. In the above circumstances, the R.C.A. was justified in holding that the bona fide requirement of Smt. Kalawati for her son Shankar Lal was not negated on the ground that Shankar Lal could share the business with his son at the Bhujji Bhawan shop.

8. As regards the sale of the shop let out to Chandumal, against whom an eviction suit was filed, not only in her testimony but also in the sale deed, it was specifically shown by Smt. Kalawati that immediate funds were required for the wedding of Seema, her grand daughter. The tenant Abdul Sattar had admitted this fact that at the time of institution of the Suit for eviction against Chandumal, Seema, the daughter of Shankar Lal was not married. Thus, the mere fact that the landlady Smt. Kalawati had sold a non-residential accommodation let out to Chandumal did not run counter to her bona fide requirement of the suit premises for the non-residential need of Shankar Lal, her son. The evidence led by the tenant Abdul Sattar leaves no room for any doubt that he has failed to rebut the presumption that arose in favour of Smt. Kalawati Devi on the basis of evidence led by her that the requirement set up by her was bona fide. The R.C.A. was thus entirely justified in granting eviction of the applicant/tenant from the suit

premises on the ground of bona fide requirement of the suit accommodation for the nonresidential need of Shankar Lal.

9. Despite the fact that Smt. Kalawati could not be further cross-examined by the learned Counsel for the tenant on the reply given by her upon re-examination that she needed the accommodation not only for her own self but also for her son, no prejudice is caused to the Appellant/tenant because the Appellant/tenant while having the opportunity to cross-examine her did not avail the opportunity before the Commissioner on the pretext that the R.C.A. should first decide the objection raised by the tenant. This was nothing but delaying tactics. The learned Counsel for the tenant should have further cross-examined Smt. Kalawati on the same day after a single question was put to her in re-examination. The conduct of the tenant in the proceedings before the R.C.A. has been such as runs counter to the intention of the legislature in enacting Sub-clause (2) of Section 23-D of the Act, 1961. It is due to the conduct and the delaying tactics adopted by the tenant that instead of the hearing of the application being conducted on day to day basis it had lingered for over more than a decade. This has been taken note of in the High Court order dated 13.08.1997 passed in Civil Revision No. 2104/1995 by the tenant. In this manner, due to deliberately non-availing the opportunity of further cross-examination on the date of re-examination of Smt. Kalawati no prejudice whatsoever is caused to the applicant/tenant due to nonavailability of Smt. Kalawati for further cross-examination at a later date.

10. Learned Counsel for the applicant tried to argue that due to the death of landlady Smt. Kalawati Devi during pendency of this revision the bona fide requirement had explained with her. However, this question is no more res integra and is covered by the decision of the Supreme Court in *Shakuntala Bai and Others Vs. Narayan Das and Others*, which has been referred to in *Usha P. Kuvelkar and Others Vs. Ravindra Subrai Dalvi*, . It was observed by the Supreme Court in *Shakuntala Bai v. Narayan Das* (supra) that the bona fide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate. In this view of the matter, the argument advanced by the learned Counsel for the applicants also deserves outright rejection.

11. The R.C.A. has after considering the pleadings of the parties and discussing the entire evidence upheld the landlord's plea of bona fide requirement. In this view of the matter as also for the reasons aforesaid, I find that there is no such legal infirmity or manifest error of law or jurisdictional error in the impugned order so as to call for any interference in revision.

12. In the result, this revision being devoid of any merit is dismissed. Stay of eviction ordered on 12.12.1997 stands vacated automatically.