

(2002) 08 CHH CK 0001
In the Chhattisgarh High Court
Case No : Second Appeal No. 265 of 2001

Baghel Prasad Dharam Chand Jewellers	APPELLANT
Vs	
Chandra Prakash Vaidya	RESPONDENT

Date of Decision : 21-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)

Citation : (2002) 4 CGLJ 226 : (2002) 4 CGLJ 122 : (2002) 4 MPHT 18

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Fakhruddin, J.—The appellant/defendant has preferred this appeal against the judgment and decree passed by the Lower Appellate Court, dated 26-7-2001 passed in Civil Appeal No. 10-A/2001, confirming the judgment and decree dated 28-9-98 passed by the Civil Judge, Class-I in Civil Suit No. I-A/98. Briefly stated facts of the case are that the respondent/plaintiff filed a suit for eviction against the appellant/defendant on 16-1-1995 on the ground that the appellant/defendant is tenant and the respondent/plaintiff is landlord and the suit accommodation is required for starting of business of his son Ashish. It was submitted that there is no other reasonably suitable accommodation.

2. The appellant/defendant filed written statement and denied the claim of the respondent/plaintiff. It was also contended in the written statement that the alternative suitable accommodation for carrying on business of Ashish is available with the plaintiff. Learned Trial Court framed 8 issues including the issue regarding bona fide need and for carrying on business of son of the plaintiff whether any other suitable accommodation is available. The plaintiff examined Chandra Prakash (P.W. 1), Shiv Kumar Soni (P.W. 2) who is neighbour of the plaintiff, and Ashish (P.W. 3) who is son of the plaintiff for whom need of accommodation was shown. The defendant examined his son Dharamchand Soni

(D.W. 1) who is attorney holder of the respondent/defendant and Laxmi Parsad (D.W. 2). Learned Trial Court after considering the oral and documentary evidence and the facts and circumstances on record passed the judgment and decree in favour of the plaintiff/respondent. Learned Trial Court has discussed the relevant issues in para 6 of its judgment.

3. Feeling aggrieved by the judgment and decree passed by the learned Trial Court the appellant/defendant preferred appeal before the Lower Appellate Court. Learned Lower Appellate Court formulated question in para 7 of its judgment which is quoted below:--

^^D;k fookfnr LfKku dk oknh@m?kjoknh HkouLokhe vkSj izfroknh@vihykFkhZ fdjk;snkj gksdj oknxzLr LfKku dh oknh@m?kjoknh dks vius o;Ld iq= vk"kh"k oS| ds lksus&pkanh ds O;olk; okLrs okLrfod :i ls lnHkkoukiwoZd vko";drk gS**

Learned Lower Appellate Court discussed the issue in its judgment in paras 8 to 27 and has recorded its finding in para 29 of the judgment, confirming the judgment and decree passed by the Trial Court.

4. Feeling aggrieved by the judgment and decree passed by the Lower Appellate Court the appellant/defendant has filed this appeal before this Court, raising following questions as substantial questions of law:--

(1) Whether the Courts below committed an error of law in passing a decree for eviction u/s 12 (1) (f) of the M.P. Accommodation Control Act, 1961 ?

(2) Whether the plaintiff failed to prove that the requirement set forth by him was a bona fide requirement and the finding in relation to the above fact is perverse on the face of record ?

(3) Whether the plaintiff failed to prove that he is having no alternative reasonably suitable accommodation of his own in his occupation in the town concerned and the finding in this regard is perverse on the face of the record ?

(4) Whether the valuable documentary and oral evidence rebutting the bona fide requirement of the plaintiff has not been considered by the Courts below and no ground for eviction is made out u/s 12 (1) (f) of the Act ?

(5) Whether the Courts below committed an error of law in not accepting that the requirement of the plaintiff has terminated due to availability of the non-residential premises during the pendency of the suit, which the plaintiff again rented out to different tenants ?

The questions, which arise for consideration before this Court is whether the findings recorded by the Court below are justified and whether this appeal involves any substantial question of law.

5. So far as bona fide requirement is concerned the matter is covered by the decision of Hon"ble Supreme Court in the case of Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, . Para 13 of the judgment is quoted below:--

"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 Whiteley define bona fide to mean "good faith, without fraud or deceit". Thus the term bona fide 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 bona fide" is suggestive of legislative intent that a mere desire which is the out come 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 of 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 the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the Court. The judge of facts should place himself in the armchair 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 bona fides of the need of the landlord for the 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 bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against."

This Court also considered the same issue in the case of Riyazul Raheem Vs. Raheem, .

6. Learned Counsel for the respondent also referred to a decision in the case of Deena Nath Vs. Pooran Lal, , wherein the question of bona fide requirement of landlord has been considered as well as the question of suitable alternative accommodation. Learned Counsel for the respondent has referred another decision in the case of Y.G. Krishna Vs. Addl. Industrial Tribunal-cum-Addl. Labour Court, Hyderabad and others, in para 10 of the said judgment it has been observed that "It is a settled position of law that the landlord is the best judge of

his requirement for residential or business purpose and he has got complete freedom in the matter (See *Prativa Devi Vs. T.V. Krishnan*, . In the case in hand the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted".

7. The contention of the respondent/landlord is that the accommodation, which has been in occupation of the tenant, is suitable because it is on the main road. During the course of argument in view of the decision in the case of *Deena Nath (supra)* it was submitted that in cross-examination of *Dharamchand Soni (D.W. 1)* in para 18 it was offered that a shop of *Suresh Golcha* may be occupied by the appellant/defendant if so desire. Before this Court also the offer was made and hearing was adjourned for giving reply. Attorney holder of the appellant, who is son of the appellant was asked in the Court whether he is willing to take the said alternative accommodation, the reply has been filed in writing to the effect that "the appellant denies the offer because at present it is not a shop but the same is an open place and shall be required to be rebuilt up for making it as a shop", and thus the offer has been denied.

8. It is pertinent to mention here the original record of the case was sent for inspection, which was misplaced, however record was reconstructed.

9. This Court has gone through the statements of the witnesses. *Chandra Prakash (P.W. 1)* in para 8 of his deposition has stated that the shop in dispute is on the main road of *Sadar Bazar* and, therefore, it is reasonably suitable for doing the retail business of gold, in comparison of any other shop. Similar is the version of *Shiv Kumar Soni (P.W. 1)* who is neighbour and also trading in the same business. In para 3 he has stated that there are other shops of the plaintiff in the market but all those shops are behind the shop in dispute, and there is difference in the size of the shops. He further stated in para 4 that amongst all other shops of the plaintiff the shop in question is most suitable because it is on the main road. *Ashish Vaidh (P.W. 3)* for whom the bona fide need has been shown by the landlord has stated in para 2 of his deposition that the door of shop in dispute opens on the main road of *Sadar Bazar*. Para 18 of the deposition of *Dharam Chand Soni (D.W. 1)* who is son and attorney holder of the appellant shows that a specific offer was put to him whether he wants to continue with his business in the *Suresh Golcha's* shop. *Laxmi Parsad (D.W. 2)* has stated in para 11 of his deposition that the shop in dispute is on the main road.

10. Thus the plaintiff/landlord has shown that the shop in dispute is more suitable than other shops because it is on the main road of *Sadar Bazar* and reasonably suitable for carrying on retail business of gold ornaments. The appellant/tenant has failed to demolish the version of the plaintiff/landlord and has also denied the offer made by the landlord for providing alternative accommodation. In a decision of High Court of Madhya Pradesh in the case of *Rajmal Jain v. Smt. Mangu Bai*, reported in 1998 ACJ 455, it has been held that "where the tenanted accommodation situated on the main road is more suitable for starting business as compared to the alternative accommodation situated in

the back lane, the requirement of the landlord of the tenanted accommodation cannot be negative on the ground of availability of alternative accommodation." In *Dhannalal v. Kalawatibai and Ors.*, reported in 2002 AIR SCW 2873, Hon"ble Apex Court has held that "Alternative accommodation-- Plea of availability of, so as to defeat requirement of landlord for suit premises-- alternative accommodation must be one "owned" by landlord and not tenanted and should be suitable in all respects as suit accommodation--Landlords proposing to start cloth business or shift and continue business of ready-made garments-- Accommodation situated on first floor cannot be said to be suitable alternative accommodation in comparison to which shops situated in ground floor."

11. In view of the discussion made herein above and having considered the facts and circumstances and the material available on record and considering the decision cited above in the opinion of this Court there is no infirmity in the concurrent finding recorded by both the Courts below. The landlord has made out a case for eviction of the tenant. No substantial question of law arises for determination of the case, which is sine qua non for invoking jurisdiction u/s 100 of the Code of Civil Procedure.

12. Counsel for the appellant was asked as to whether he wants some time to vacate the premises subject to usual conditions on undertaking being furnished but he declined.

13. The appeal fails and is dismissed. No order as to costs of this appeal.