
(2014) 06 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil First Appeal No. 324 of 2004

Gendkanwar

APPELLANT

Vs

Bhanwar Lal

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2014) 2 RCR(Rent) 417

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Sanjay Nahar, Advocate for the Appellant; Neeraj Kumar Jain and Pankaj Bohra, Advocate for the Respondent

Judgement

Arun Bhansali, J.—This appeal under Section 96 CPC is directed against judgment and decree dated 19.03.2004 passed by Additional District Judge (Fast Track) No. 2, Bhilwara, whereby, the suit filed by the plaintiff-respondent for eviction, arrears of rent and damages has been decreed. The facts in brief may be noticed thus: the plaintiff Bhanwar Lal filed a suit with the averments that a shop and a room situated at Bazar No. 3, Bhopalganj, Bhilwara was let out to Hari Singh husband of defendant No. 1 and father of defendant Nos. 2 to 5; Hari Singh died; the defendants were in possession of the suit premises in their capacity as tenants; the rent of the shop and room was Rs. 600/- and Rs. 1200/- per month respectively; the shop was let out about 15 years back and the room was let out about 12 years back; the tenancy was oral; the rent of the premises was never tendered/paid in time and a sum of Rs. 54,600/- was outstanding towards rent of the shop as well as the room for different periods and defendants have committed several defaults; the defendants started to materially alter the suit premises and when despite request they did not desist, the plaintiff had to file a suit for permanent injunction; the suit property has been substantially damaged; the suit premises has been materially altered; the defendants prepare and ("refreshment items") by setting up a (stove), which results in smoke and pollution and, therefore, defendants have created nuisance; the defendants wash

utensils and plates inside and outside the premises, which results in (mire) and the refreshment items are given in paper etc., which are thrown outside the gate, the customers park their vehicles and cycles in front of plaintiff's door, which results in huge inconvenience and in this manner the defendants create nuisance; elder son of the plaintiff Krishan Kumar is involved in the business of synthetic packing material and the suit shop and room were reasonably and bona fide required for his business; in absence of the shop and the room plaintiff and his son are suffering inconvenience, plaintiff's son was not able to operate his business properly; the defendants would suffer no hardship in vacating the suit shop as they have two shops in front of Milan Talkies, which are lying vacant; the plaintiff is suffering comparatively more hardship; defendants have acquired a shop in the property of Samdani, where, he is conducting his business; the plaintiff's residence is near the suit shop and its entrance is very near to shop where the defendants' customers gather and the defendants put chairs, which results in inconvenience to the plaintiff and his family members from ingress and egress to the residential portion; based on the above allegations, the plaintiff prayed for vacant possession of the suit shop, arrears of rent, damages and mesne profit.

2. A written statement was filed by the defendants and generally the averments made in the plaint were denied; it was claimed that the suit premises was in possession of the defendants for about 22 years; the shop and the room were taken on rent together; the rent was regularly paid, however, when the plaintiff claimed non-payment, for ensuring that the defendants were not termed as defaulters, account payee cheque was sent to the plaintiff, however, the same was sent back; the rent was paid yearly as per plaintiff's convenience; ultimately, the rent was deposited under the provisions of Section 19A of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 ("the Act"); the allegations about material alternation were denied; the allegations about smoke and pollution were also denied and it was claimed that the refreshment items were prepared on LPG Gas and Kerosene Stoves, which also do not result in any nuisance; the suit shop was let out knowing fully well that the same would be used for preparation and sale of etc. and for the said purpose stoves would be used and water will be used for washing the utensils and, therefore, the plaintiff has no cause; the defendants were conducting the business for more than 22 years and the sudden filing of the suit on the said facts is sufficient to prove the mala fides i.e. for getting the suit premises vacated and for enhancement of the rent; paper etc, are not used, but plates and glasses are used and the customer, who wants to take goods at home, is delivered the same in polythene bags; vehicles are not parked in front of plaintiff's door and no mire is created; the suit premises is not required for reasonable and bona fide requirement; plaintiff's son was not conducting any business of synthetic packing material; the averments relating to comparative hardship were also denied and it was claimed that defendants' family is dependent on the income of the said shop; counter claim was made seeking determination of standard rent and, ultimately, it was

prayed that the suit be dismissed.

3. Based on the pleadings of the parties, the trial court framed as many as 11 issues; on behalf of the plaintiff three witnesses PW-1 Bhanwar Lal, PW-2 Krishan Kumar and PW-3 Shyam Sunder were examined and 21 documents were exhibited; on behalf of defendants DW-1 Gopal Singh, DW-2 Om Prakash Kothari, DW-3 Chainsukh and DW-4 Rajkumar Lahoti were examined and 19 documents were got exhibited.

4. After hearing the parties, the trial court decided the several issues in the manner that suit premises was initially let out @ Rs. 600/- per month only and no part of it was let out for Rs. 1,200/- per month as claimed; no default in payment of rent was proved; material alteration in the suit premises was not proved; plaintiff failed to prove any damage; the suit premises was reasonably and bona fide required by the plaintiff for the business of his son; the plaintiff would suffer comparatively more hardship if the suit premises was not vacated; both the parties agreed that partial eviction would not satisfy the requirements of either of the party; from the nature of business of the defendants, the nuisance was natural; standard rent was determined at Rs. 3,200/- per month and in view of the findings on issue Nos. 6 and 9 regarding bona fide requirement and nuisance, the trial court decreed the suit for eviction along-with mense profit @ Rs. 3,200/- per month.

5. It was contended by learned counsel for the appellants that the trial court was not justified in coming to the conclusion that the suit premises was bona fide required by the plaintiff for his son's business and the appellants have created any nuisance at the suit premises; the fact that the suit was filed invoking several grounds available under the Act and the plaintiff failed to prove the said grounds necessarily shows the desperation of the plaintiff in getting the suit premises vacated some how or the other; from the oral and documentary evidence available on record, it is proved that the son of the plaintiff was not conducting any business whatsoever and, therefore, the plea raised in this regard being wholly incorrect, the trial court was not justified in decreeing the suit on the ground of bona fide requirement, merely by placing reliance on certain judgments of Hon'ble Supreme Court, principles laid therein, which cannot be applied in absence of facts; the suit premises was let out to the appellants in the year 1973 and the same was let out for the purpose of preparation and sale of refreshment items, which was being conducted from the inception, no complaint was made by the plaintiff for over 22 years and to suddenly claim that the appellants were causing nuisance cannot be taken cognisance of in view of the provisions of the Act and the law laid down by Hon'ble Supreme Court in the case of Rafat Ali Vs. Sugni Bai and Others, and this Court in Jagdish Vs. Manoj Kumar Sharma, .

6. Per contra, learned counsel for the respondents submitted that the trial court was justified in decreeing the suit on the ground of bona fide requirement as well as nuisance, which is writ large in view of the business being conducted by the

appellants and the evidence available on record; it was submitted that burden has duly been discharged by the plaintiff by way of oral and documentary evidence and the appellants have failed to produce any material contrary to the same and, therefore, the trial court was perfectly justified in decreeing the suit filed by the plaintiff.

7. I have considered the rival submissions made by learned counsel for the parties, perused the findings recorded by the trial court and the record of the trial court.

8. The trial court has decreed the suit on account of reasonable and bona fide requirement of the landlord and the nuisance created by the defendants out of several grounds raised by the plaintiff; the plaintiff in the plaint alleged that the suit premises was reasonably and bona fide required for the business of his son Krishan Kumar, who was engaged in the business of synthetic packing material and in absence of the suit premises, he was suffering huge inconvenience and was not able to conduct his business properly; the averments made in the plaint were denied by the defendants by indicating that it was wholly incorrect to allege that plaintiff's son had business of synthetic packing material and the shop was required for business of packing material: on behalf of the plaintiff PW-1 Bhanwar Lal appeared in the witness box and stated that the shop was required for business of his son, who was involved in the business of packing material and was operating from the house and as the business was not prospering from inside the house, the shop was required; there were several shops of packing material around the suit shop, there were several shops of cloth where packing material is used, the son conducts business in the name of Harish Tea Company; in the cross-objection the plaintiff stated that he did not remember as to from when his son was conducting the business of packing, he was conducting the business from the house, for how long he was doing the business he did not know, he was conducting business in the name of Harish Tea Company; a sign board in the name has been prepared, but there was no place to put it, he was undertaking the business in a 15 x 10 ft. room, denied that his son was not doing business of packing, his son was engaged in both wholesale and retail business.

9. The crucial evidence on the issue is that of Krishan Kumar PW-2, for whose requirement the suit shop was claimed to have been required, who stated that he was conducting business of packing material from inside the house and for about eight years his business had wholly come to a halt and, therefore, the suit shop was urgently required and placed Exhibits-13 to 19 being letters from M/s. Bhawanani and Son Pvt. Ltd., from whom, he used to purchase material, he used to conduct business in the name of Harish Tea Company, he got it registered and gave out the registration number.

10. The statement of PW-2 on being cross-examined, which is material reads as under:-

From the above cross-examination, it is apparent that PW-2 Krishan Kumar, for

whose business, the suit shop is claimed to be reasonably and bona fide required and it is claimed that he is conducting business of packaging material from inside the house, did not know the date and year of the last bill, the year when the last sales tax assessment took place, last time for which year the books of accounts were written, he vacated the shop where he was conducting business by mutual discussion with the landlord, did not remember when the said shop was vacated, did not remember the year when the last bill for sale of packing material was prepared and also did not remember any party to whom he had sold packing material after 1988; the statement was recorded on 08.07.2003 and the suit was filed on 03.08.1995.

11. The above cross-objection clearly reveals that Krishan Kumar, the plaintiff's son was not doing any business from inside his house as claimed in the plaint and in the statement of PW-1; the very fact that he was not in a position to give out even the year when he last purchased any goods, the sales tax assessment took place, the accounts books were written and when he last sold the packing material and could not name any person, to whom, he has sold the packing material, clearly goes to show that the plaintiff's son Krishan Kumar was not doing any business whatsoever and/or business of packing material as claimed in the plaint; no documentary evidence in support of the plea of business was placed on record and the documents Exhibits-13 to 19 are merely copies of letters endorsed by one Bhawanani and Son Pvt. Ltd. in the year 1990-91 having written to parties making trade inquiry, to contact the Harish Tea Company, which is claimed by the plaintiff as his son's business enterprise; the very fact that the plaintiff chose to place letters Exhibits-13 to 19 instead of any other material pertaining to the business of his son Krishan Kumar like sales tax assessment orders, trading account, profit and loss account and balance-sheet pertaining to his business, clearly goes to show that either the same was not available and/or the same were deliberately not produced.

12. The trial court while dealing with the issue merely reiterated the requirements as laid down in various judgments of Hon'ble Supreme Court and did not even advert to the said crucial oral evidence of PW-2 and came to the conclusion that the issue regarding the reasonable and bona fide requirement stood proved without recording any finding about the existence of the business of plaintiff's son and the fact that he was conducting the same from inside the house and, therefore, the suit premises was required for conducting his business properly and, consequently, the said finding of the trial court cannot be sustained.

13. Hon'ble Supreme Court has laid down in the case of Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, in the context of Delhi Rent Control Act, 1958 as under:-

"12. A perusal of Section 14 of the Act shows that the law has imposed restrictions on the recovery of possession of any premises by landlord from a tenant notwithstanding any law or contract to the contrary. However, an order for recovery of possession is permissible on one or more of the specified grounds.

One such ground is the premises let for residential purposes being required bona fide by the landlord for occupation as residence for himself or for any member of his family dependent on him. What is a bona fide requirement is not defined in the Act. The words "need" and "require" both denote a certain degree of want with a thrust within demanding. "Need" or "requirement" qualified by word "bona fide" or "genuine" preceding as an adjective - is an expression often used in Rent Control Laws. "Bona fide or genuine need" of the landlord or that the landlord "genuinely requires" or "requires bona fide" an accommodation for occupation by or use for himself is an accepted ground for eviction and such expression is often employed by Rent Control legislation drafts-man. The two expression are interchangeable in practise and carry the same meaning.

13. Chambers 20th Century Dictionary defines bona fide to mean "in good faith : genuine". The word "genuine" means "natural : not spurious : real : pure : sincere". In Law Dictionary, Mosley and Whitely 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 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 ejection of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of 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 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 bona fide. 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 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 proving 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 realities of life. An approach either too liberal or too conservative or pedantic must be guarded against."

14. Applying the said principles to the case in hand, it is apparent that the requirement of the landlord-respondent cannot be said to be bona fide and, therefore, the finding recorded by the trial court on issue No. 6 is reversed and it is held that the plaintiff has failed to prove that the suit premises is bona fide required for conducting the business of plaintiff's son Krishan Kumar.

15. The next issue requiring consideration in the present appeal pertains to the ground of nuisance, which has been held by the trial court in favour of the plaintiff.

16. Section 13(1)(d) of the Act provides the ground pertaining to nuisance, which can form the basis for eviction of a tenant, which reads as under:-

"13(1)(d) that the tenant has created a nuisance or has done any act which is in consistent with the purpose for which he was admitted to the tenancy of the premises or which is likely to affect adversely and substantially the landlord interest therein; or"

17. A over all view of the various grounds indicated under Section 13(1) of the Act including Section 13(1)(d) of the Act reveals that the ground seeking eviction should sprang up at some point later than when the premises was let out and there has to be a terminus quo giving cause of action to the landlord based on the grounds available under the Act i.e. non-payment of rent, causing substantial damage to the premises, material alteration, creating a nuisance, subletting the premises, renouncing the character as landlord, ensure in employment, reasonable and bona fide requirement, non-user of premises, requirement for completing work etc.

18. From the averments made in the plaint and the evidence which has come on record, it is clearly established that the suit premises, a shop was let out to the appellants for preparation and sale of refreshment items and tea and the said business was being conducted by them since 1973; the allegation made in the plaint pertaining to nuisance relates to causing of smoke and pollution, causing mire, parking of vehicles in front of residence; nowhere, in the plaint, it was alleged that the shop was let out only for the purpose of preparing and selling tea, however, during course of his statement, the plaintiff PW-1 tried to improve the case by alleging that the shop was let out only for the purpose of preparing and selling tea and not for selling refreshment items; when as per the claim of the defendants and the material available on record, it is fairly established that the defendants were conducting the business of preparation and sale of refreshment items since the year 1973 and the plaintiff has failed to point out any terminus quo as to from when the defendants "created nuisance", the ingredients of Section 13(1)(d) of the Act are apparently not fulfilled.

19. Interestingly, the plaintiff did not place any material on record in support of

the contention about nuisance being caused by the defendants by way of any kind of photographs etc. and merely oral statements have been made, which have been equally negated by the defendants by way of oral evidence; however, as the burden lay on the plaintiff to prove the said issue, it cannot be said that the plaintiff has been successful in discharging his burden; the only documentary evidence placed on record is a newspaper Exhibit-11, which is dated 02.01.1998 i.e. subsequent to the filing of the suit.

20. The Hon'ble Supreme Court in the case of Laxmi Raj Shetty and Another Vs. State of Tamil Nadu, while considering the question of admissibility of the news items appearing in a press report in the newspaper opined: "court cannot take judicial notice of the facts stated in a news item being in the nature of "hearsay secondary evidence", unless proved by evidence aliunde."

21. The submission made by learned counsel for the respondents that it was for the defendants to place photographs etc. and the material to prove that no nuisance was being created has no basis in law.

22. Hon'ble Supreme Court while dealing with the aspect of nuisance in the case of Rafat Ali (supra) held and observed as under:-

"13. Though the word "nuisance" is not defined it can be inferred from the context that what is meant therein is the actionable nuisance which is recognised in Common Law. Nuisance as understood in law is broadly divided into two classes - public nuisance and private nuisance. The former consists of some acts or omissions which result in violation of rights which one enjoys in common with other members of the public. But the latter i.e. private nuisance, is one which interfere with a person's use and enjoyment of immovable property or some right in respect of it.

14. In Halsbury's Laws of England (Vol. 34 of the fourth edition at page 102) essentials of common law of nuisance are mentioned as under:-

"309: Both unlawful act and damage necessary. In order to constitute a nuisance there must be both (1) an unlawful act, and (2) damage, actual or presumed. Damage alone gives no right of action; the mere fact that an act causes loss to another does not make that act a nuisance. For the purpose of the law of nuisance, an unlawful act is the interference by act or omission with a person's use or enjoyment of land or some right over or in connection with land."

15. Suffering of damage must be proved in a case of nuisance unless it can be presumed by law to exist. But the damage to amount to actionable nuisance must be substantial or at least of some significance. In other words, if the damage is insignificant or evanescent or trivial it would not be actionable nuisance. The following passage in para 312 of the same volume in Halsbury's Laws of England is worth extracting in this context:

"312. Damage essential. Damage, actual, prospective or presumed, is one of the essentials of nuisance. Its existence must be proved, except in those cases in

which it is presumed by law to exist.

The damage need not consist of pecuniary loss but it must be material or substantial, that is, it must not be merely sentimental, speculative or trifling, or damage that is merely temporary, fleeting or evanescent."

16. It is clear from clause (iv) of Section 10(2) of the Act that what is envisaged therein is only private nuisance and not public nuisance. This can be discerned 1 from the words "nuisance to the occupiers of other portions in the same building or buildings in the neighbourhood". Perhaps in a wide sense any industrial activity may create some sound while such activities are in operation. Such sound may be uncomfortable to those who are over sensitive to such noise. But then care must be taken because every inconvenience cannot become actionable nuisance. To make it actionable the nuisance must be of a reasonably perceptible degree as pointed out earlier.

17. Rent Control Court considered landlord's case regarding nuisance. Landlords said that the tenant was quarrelling with them "whenever they go for collection of rents." They have also alleged that appellant was running machines late in the night and thereby causing nuisance to the other occupiers of the building. As the appellant was running high business with the same machines right from the beginning, Rent Control Court was not inclined to treat such noise as amounting to nuisance. Appellate authority pointed out that "there was no complaint prior to the filing of the eviction petition at any time against the tenant that he caused damage to the building." On the other hand, the Rent Control Court noticed that machinery was installed in this building way back in 1970 and the same is under operation even now. On the above reasoning both the authorities uniformly concluded that tenant has not committed any act of nuisance to attract the ground of eviction. But the High Court upset such a finding in a very casual manner unmindful of the inherent limitations of the re-visional jurisdiction."

23. The Hon''ble Supreme Court in the above judgment upheld the findings of the authorities under the Rent Act that as the appellant was running business with the same machines right from the beginning, the authorities were not inclined to treat the noise as amounting to nuisance.

24. In the present case also once it is proved on record that the same business was being conducted by the appellants in the suit premises since the year 1973 i.e. from the beginning of the tenancy, it cannot be said that the appellants have "created nuisance" so as to attract the ground of eviction under Section 13(1)(d) of the Act. So far as oral evidence of the plaintiff in this regard is concerned, all the three witnesses have given omnibus statements regarding alleged smoke, pollution, mire 1 and throwing of papers etc. by the customers visiting the shop.

25. Besides the fact that the said aspect except the oral evidence has not at all been substantiated by any other cogent evidence, in view of the requirements of law pertaining to nuisance, the allegations do not suffice to make out a case of nuisance in the facts and circumstances of the present case and, therefore, the

findings of the trial court on issue No. 9 cannot be sustained and the same is, therefore, also reversed. Consequently, the appeal is allowed. The judgment and decree dated 19.03.2004 passed by the trial court in so far as the same pertains to the eviction of the appellants from the suit premises is concerned is set aside. No costs.