

CASE NO.:
Appeal (civil) 7041 2000

PETITIONER:
HAR NARAIN DAGA

Vs.

RESPONDENT:
HEERALAL & OTHERS

DATE OF JUDGMENT: 01/12/2000

BENCH:

JUDGMENT:

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J U D G M E N T

D.P.MOHAPATRA, J.

Leave granted.

The appellant is the tenant of a room situated on the ground floor of a building in Kandoi Bazar in the Jodhpur city of which the respondent is the landlord. The tenant was using the room as a shop. The landlord resides on the first floor of the building. He filed a suit in 1973 seeking eviction of the tenant on the grounds that the room is needed for construction of a staircase to the first floor of the building and also for his bona fide personal necessity under Section 13 (1)(h) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act'). The tenant contested the suit refuting both the grounds of eviction pleaded by the landlord.

The trial court rejected the case of the landlord that the room was required for building a staircase; but accepted the plea of bona fide personal necessity. The trial court decreed the suit and ordered eviction of the tenant. On appeal filed by the tenant the appellate court confirmed the finding of the trial court and maintained the decree of eviction. The tenant carried the matter further in 2nd appeal before the High Court of Rajasthan which proved unsuccessful. Hence this appeal.

Shri Sushil Kumar Jain learned counsel appearing for the appellant contended that the courts below committed error in accepting the plea of bona fide personal necessity of the landlord. According to Shri Jain on the material on record the finding should have been recorded that it is not a case of bona fide necessity but a mere wish of the landlord to get the tenant evicted from the shop room in question. Shri Jain further contended that before accepting the plea of bona fide personal necessity of the premises taken by the landlord the Courts below should have

considered the question of comparative hardship which is a mandatory requirement under section 14 of the Act. If this question is properly considered in the light of the material on record, submitted Shri Jain it is apparent that the hardship that would be caused to the tenant by the decree of eviction is much greater compared to the inconvenience, if any, caused to the landlord.

Shri Badri Das Sharma, learned counsel appearing for respondent No.1 supporting the judgment under challenge submitted that though 27 years have rolled by since the suit was filed the landlord is yet to get possession of the premises on account of which he and members of his family (wife and four sons) have been facing difficulties. Shri Sharma further contended that the prolonged suffering to which the landlord and members of his family have been put should also be considered by this Court while judging the matter.

We have perused the judgments passed by the trial court, the first appellate court and the High Court. The question of bona fide personal necessity is essentially a question of fact on which all the three courts have concurrently held against the appellant. The case of the respondent that he needs the room on the ground floor for use by himself and his four growing children (sons) has been accepted by the courts below. The Courts have also accepted the case that the respondent who is an assistant teacher in a government middle school is often approached by students for giving private coaching, for the purpose of which he needs the room on the ground floor. In view of the concurrent findings recorded by the courts below the High Court was justified in not interfering with the finding in the second appeal. On the question of comparative hardship as provided under section 14 of the Act we find that the trial court having accepted the case of the landlord that his need for the room on the ground floor as a part of his residential accommodation for use of himself and members of his family, compared it against the use of the room by the tenant for commercial purpose. The court took note of the fact that members of the family of the tenant are carrying on business at different places in the town and the room in question is used by the appellant and some employees occasionally. No particular use of the room appears to have been brought forth in the material placed by the tenant. Weighing the present use of the premises in question by the tenant and the need for its use by the landlord the trial court held that the balance for weighing the comparative hardship tilted in favour of the landlord. The said finding was accepted by the appellate court and the High Court. The finding does not suffer from any serious illegality. Therefore, the High Court cannot be faulted for declining to interfere with it in second appeal. Further we find that the High Court has taken care to protect the interest of the tenant in making the observation that in case the room in question is not used by the landlord for the purpose for which the eviction has been ordered then he (tenant) will be entitled to be put in possession of the room as provided in section 15 of the Act. On the facts and circumstances of the case we have no hesitation to hold that the High Court rightly dismissed the second appeal. Accordingly the appeal is dismissed with costs. Hearing fee assessed at Rs.5,000/-.

JUDIS