

CASE NO.:
Appeal (civil) 4041 of 2001
Special Leave Petition (civil) 5722 of 1999

PETITIONER:
DEENA NATH

Vs.

RESPONDENT:
POORAN LAL

DATE OF JUDGMENT: 11/07/2001

BENCH:
D.P.Mohapatro, U.C.Banerjee

JUDGMENT:

D.P.MOHAPATRA, J.

Leave granted.

This appeal filed by special leave is directed against the judgment and decree passed by the High Court at Jabalpur in Second Appeal No.81/98 in which the Court set aside the concurrent judgments of the courts below and dismissed the suit. The appellant, who is the landlord of the suit premises filed Civil Suit No.4-A/92 in the Court of the Ist Civil Judge, Class I, Hoshangabad seeking eviction of the respondent, the tenant on the grounds of default and bonafide requirements under Sections 12(1)(a) and (f) of the Madhya Pradesh Accommodation Control Act, 1961 (for short 'the Act') respectively.

The suit premises is one of the five shop rooms on the ground floor of the building owned by the plaintiff. It was the case of the plaintiff that he needs the shop room in occupation of the defendant for the purpose of opening a new shop for his son Pradeep Kumar Gupta. The defendant refuted both the grounds taken in support of the plea for his eviction. He denied that he was in arrear of rent and also that the landlord had any bonafide need for the premises. The defendant further pleaded that one other shop room which was previously let out to Krishnabai and Krishna Gopal was lying vacant long prior to the filing of the suit on 4.1.1988 and that during pendency of the suit another shop room which was in occupation of one Kailash Jatav had been vacated. It was also the case of the defendant that Pradeep Kumar Gupta for whose benefit his (defendant) eviction was sought had been allotted shop room No.31 in Ravi Shankar Market in Hoshangabad. In these circumstances, the defendant contended, there was no bonafide need of the landlord for the suit premises. It was the further case of the defendant that indeed the landlord wanted to enhance the rent from Rs.225/- p.m.

to Rs.400/- p.m. which he (defendant) did not agree to pay. Hence the suit for eviction. Both the parties led evidence in support of their respective cases. The appellant, while admitting the fact that the shop room which was vacated by the tenants Krishnabai and Krishnagopal was at his disposal but that shoproom was not suitable for starting the business of sale of clothes and tailoring materials which his son intends to start. He was also constrained to admit that shop No.31 of Ravi Shankar Market had been allotted in the name of his son-Pradeep Kumar Gupta. Regarding the shop room vacated by Kailash Jatav the explanation of the landlord was that it is a small triangular shaped room which is not suitable for the purpose for which eviction is sought. The thrust of his contention was that on getting vacant possession of the suit premises from the defendant, he will amalgamate that room with the room vacated by Krishnabai and Krishnagopal and make it into one room. From the side of the defendant on the other hand, an attempt was made to show that the need pleaded by the landlord on the materials on record, can never be said to be bonafide need. The action of the plaintiff for getting him evicted from the suit premises, according to the defendant, was purely arbitrary and whimsical.

The trial Court on appreciation of the evidence on record, did not accept the case of the plaintiff for eviction of the tenant on the ground of arrear of rent. Though the fact of arrear was proved the tenant had deposited the amount on receiving notice under Section 13 of the Act and therefore, the trial court held that that would not be the basis of a decree of eviction. The case of the plaintiff for eviction on the ground of bonafide requirement was accepted by the trial Court and the suit for eviction of the defendant was decreed.

The appeal filed by the defendant-tenant proved unsuccessful.

In Second Appeal the High Court initially formulated the following question of law for decision:

"Whether in view of the admitted position that the shop belonging to Krishnabai and Krishna Gopal as well as that of Vishal Tailors was already vacated, the Court below was entitled to decree the suit on the ground that the respondent had no reasonable and suitable accommodation for starting the business of tailoring material of his son?"

In course of hearing of the appeal, the High Court formulated a further question of law for its decision in the following terms:

"Whether under the facts and circumstances of the case, the requirement of the respondent, could be said to be bona fide?"

(Emphasis supplied)

On a detailed discussion of the evidence on record, the High Court recorded the findings inter alia that the averments in the plaint that the shop occupied

by Krishnabai and Krishna Gopal was not vacant and that he had filed a civil suit for the purpose was a mis-statement of fact because the shop occupied by these persons was already vacant when the plaint was filed. Indeed the shop room was lying vacant for the last three years. The Court also found that the shop occupied by Kailash Jatav was also in possession of the landlord. The High Court further observed that no attempt had been made by the landlord to offer any explanation as to why the shop room No.31 which was concededly allotted to his son Pradeep Kumar Gupta was not suitable for opening the shop for sale of clothes and tailoring materials. Referring to the sketch map attached to the plaint, the High Court came to the conclusion that sufficient alternative accommodation was already available with the plaintiff-landlord at the time of filing the suit and also due to the subsequent development of one more shop room being vacated by Kailash Jatav during pendency of the suit. The High Court was of the view that the courts below had ignored the relevant fact situation which is manifest from the materials on record and the finding accepting the plea of bonafide requirement of the landlord by the courts was vitiated on that ground. The High Court being conscious of the position that bonafide requirement in ordinary circumstances is a question of fact which is not to be interfered with in second appeal felt persuaded to hold to the contrary in the facts and circumstances on record in view of the glaring mistake leading to manifest injustice in the present case. Accordingly, the High Court set aside the concurrent judgments of the courts below and dismissed the suit for eviction of the defendant. The High Court maintained the decree passed by the courts below for recovery of rent by the plaintiff from the defendant.

Hence this appeal by the plaintiff.

We have heard learned counsel appearing for both sides at length. The main thrust of the argument of Shri K.N.Shukla, learned senior counsel appearing for the appellant, was that the High Court committed an error in interfering with the concurrent judgments of the Courts below holding that the plaintiff had successfully established his bonafide requirement for the non-residential accommodation. He further contended that the judgment of the High Court is clearly unsustainable in view of the limited jurisdiction vested under Section 100 of the Code of Civil Procedure.

Per contra Shri H.S.Parihar, learned counsel appearing for the respondent supported the judgment of the High Court. He urged that in the facts and circumstances of the case as found from the evidence the High Court rightly held that the concurrent judgments of the Courts below were manifestly erroneous and patently illegal.

From the discussions in the foregoing paragraphs, the question that arises for determination is whether in the facts and circumstances of the case, the High Court was justified in interfering with the concurrent judgments of the courts below in holding that the plaintiff required the premises bonafide for use of his son?

Section 12(1)(f) of the Act under which the eviction of the tenant was sought and granted by the lower Courts, reads as follows:

"Sec.12. Restriction on eviction of tenants.-(1) Notwithstanding anything to

the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only namely:-

- | | | |
|----------|-----|-----|
| (a) xxxx | xxx | xxx |
| (b) xxxx | xxx | xxx |
| (c) xxxx | xxx | xxx |
| (d) xxxx | xxx | xxx |
| (e) xxxx | xxx | xxx |

(f) that the accommodation let for non-residential purposes is required bona-fide by the landlord for the purpose of continuing or starting his business or that any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned;"

The section, on a plain reading, is clear and specific. The criteria to be fulfilled for an order of eviction under the provision are :

- i) that the non-residential accommodation is required bonafide by the landlord for the purpose of continuing or starting his business or that of any of his major sons; and
- ii) that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.
(emphasis supplied)

The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bonafide which is intended to avoid the mere whim or desire. The 'bonafide requirement' must be in praesenti and must be manifested in actual need which would evidence the Court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in sub-section (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available. The judgment/order of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind to these statutory requirements cannot be sustained and

the superior court will be justified in upsetting such judgment/order in appeal/second appeal/revision. Bonafide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bonafide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment. In such case the High Court cannot be faulted for interfering with the finding in exercise of its second appellate jurisdiction under Section 100 of the Code of Civil Procedure.

In this connection, we may refer to the decision of this Court in the case of Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222, in which it was held, inter alia, that "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 higher than in mere desire. The phrase "required bonafide" is suggestive of legislative intent that a mere desire which is the 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". Therein it was further held : "the High Court in revision is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law". For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available." Coming to the case on hand, the judgment of the High Court clearly bears out the position that the lower courts had failed to consider the requirement of the section regarding availability of reasonable accommodation in occupation of the landlord-appellant. As noted earlier, at the time of filing the suit, one vacant shop-room was in occupation of the landlord and in course of the proceedings one more shoproom, on being vacated by the tenant, came in his occupation. The High Court has found that the landlord could easily make arrangements for starting the shop which his son Pradeep Kumar Gupta intends to open in the vacant shoprooms. If any adjustment was necessary, then the tenant-respondent could also have been offered an alternate shoproom for his occupation. No such step was taken by the landlord during all these years. During the hearing of this appeal, we made a suggestion to the learned counsel appearing for the landlord-appellant, whether he is willing to permit the tenant-respondent to occupy the shoproom presently in his (landlord) occupation so that he may have a block of four shoprooms for the business of himself and his son. The learned counsel stated that the landlord, who was present in the Court, declined to accept the suggestion. On the discussions in the judgment there is hardly any scope for doubt that the requirement of the

landlord cannot be termed to be a bonafide requirement within the meaning of the Statute (noticed above). The High Court was justified in interfering with the concurrent judgments in the contextual facts and the same does not warrant any interference under Article 136 of the Constitution of India.

Accordingly, the appeal is dismissed. The judgment/decreed passed by the High Court stands

No order however as to costs.

JUDIS