

UDAY SHANKAR UPADHYAY & ORS.

v.

**NAVEEN MAHESHWARI
(Civil Appeal No.5888 of 2006)**

NOVEMBER 18, 2009

**[MARKANDEY KATJU AND R.M. LODHA, JJ.]
[2009] 15 (Addl.) SCR 1002**

The following Order of the Court was delivered

ORDER

1. This appeal has been filed against the impugned judgment and order of the Madhya Pradesh High Court dated 6.10.2005 in Second Appeal No. 107 of 2004.

2. Heard learned counsel for the parties and perused the record.

3. The Landlord-appellant filed a suit for eviction of the tenant from the shop in question on the ground that he needs the shop for setting up the business of his two sons viz. Nischal Upadhyay and Bhaskar Upadhyay, and there is no other suitable accommodation for the said purpose.

4. The facts have been mentioned in the judgments of the courts below and hence we are not repeating the same here.

5. The plaintiffs/appellants filed the suit for eviction against the tenant stating *inter alia*, that the shop in dispute (which is on the ground floor) is required for starting the business of Nischal Upadhyay and Bhaskar Upadhyay, major sons of plaintiff No. 1. The trial court by judgment dated 8.10.2002 found that the need of the landlord was *bona fide* and decreed the suit.

6. Before the trial court the tenants had taken the plea that the plaintiffs have alternative accommodation which is a hall over the suit shop, and hence the sons of plaintiff No. 1 can carry on business there. However, the trial court held that the said hall on the first floor is a residential accommodation and the plaintiffs have no suitable accommodation for doing business.

7. Against the judgment of the trial court, the defendant filed an appeal which has been allowed by the first appellate court by judgment dated 19.1.2004, true copy of the said judgment is at Annexure P-2. The first appellate court held that the hall above the suit shop is a suitable alternative accommodation and it can be used for non-residential purpose. Hence the first appeal was allowed.

8. It may be noted that the first appellate court has not held that the sons of plaintiff No. 1 do not have bona fide need of some premises for doing their business. All that it held was that the alternative accommodation on the first floor which is a hall can be used for doing business.

9. The appellants filed a second appeal which has been dismissed by the impugned judgment and hence this appeal.

10. Thus the fact as found by the trial court is that the sons of plaintiff No. 1 bona fide want to start their own business separately, and this finding has not been disturbed in appeal.

11. In our opinion, once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well-known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the courts below that the sons of plaintiff No. 1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained.

12. As regards the finding that the sons of plaintiff No. 1 are getting salary of Rs. 1500/- from the firm, in our opinion, this is wholly irrelevant and was wrongly taken into consideration by the High Court.

13. For the reasons given above, the judgments of the High Court and the first appellate court are set aside and that of the trial court is restored. The appeal stands allowed. No costs.

14. However, the respondent is granted one year's time to vacate the shop in dispute on furnishing the usual undertaking within six weeks from the date of this order. The respondent shall, however, continue to pay the rent during this period.

