IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

FIRST APPEAL No. 905 of 2012

BETWEEN:-

HAKIMUDDIN S/O MANSOOR HUSSAIN, AGED ABOUT 35 YEARS, RESIDENT OF HOUSE NO.27, NEAR LAKE VIEW HOTEL NOBLE SCHOOL NOOR MAHAL ROAD BHOPAL (M.P.)

.....APPELLANT

(BY SHRI AVINASH ZARGAR – ADVOCATE)

AND

KAMAL CHAND NAHAR S/O LATE SHRI BACHRAJ NAHAR, AGED ABOUT 64 YEARS, RESIDENT OF H.NO.42 MARWADI ROAD, BHOPAL (M.P.)

.....RESPONDENTS

(BY SHRI SANKALP KOCHAR – ADVOCATE)

Heard on	:	21.02.2024
Passed on	:	01.05.2024

This First Appeal having been heard and reserved for judgment, coming on for pronouncement on this day, ***Justice Amar Nath (Kesharwani)*** *pronounced the following :*

JUDGMENT

This First Appeal under Section 96 of the Code of Civil Procedure, 1908, hereinafter referred to as "CPC", has been filed being aggrieved by judgment and decree dated 06.09.2012 passed by 9th Additional District Judge, Bhopal M.P. in Civil Suit No.113-A/2010, whereby the Civil Suit filed by the respondent/plaintiff seeking eviction, vacant possession and

mesne profit has been decreed thereby directing the appellant/defendant to handover vacant possession of the suit premises to the respondent/plaintiff alongwith mesne profit.

2. Brief facts of the case are that respondent/plaintiff filed a suit seeking relief of eviction of suit premises mentioned in para-1 of the impugned judgment under Section 12(1)(f) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as "the Act of 1961"). The claim of the plaintiff inter alia was based on the allegations that the appellant/defendant is tenant in respect of suit premises on monthly rent of Rs.15,400/- (Fifteen Thousand Four Hundred). The suit premises was let out for business purpose with effect from 15th May, 2005. It was alleged that the plaintiff's younger son Nitin Nahar is a Doctor who secured degree of MD from Gandhi Medical College in May, 2009. Thereafter, he is in contractual service in Gandhi Medical College and Hamidiya Hospital, Bhopal. His son Nitin Nahar wants to open his clinic, for which suit premises is bonafidely required. It was pleaded that for the said purpose, the plaintiff has no other suitable alternative accommodation in the city of Bhopal. The plaintiff's son is having experience of the said field and since the suit premises is situated on main road, Raisen, hence it is suitable for opening clinic with all facilities. For the said purpose, plaintiff requested the defendant for evicting the suit premises on 23.03.2010 but the defendant refused to do so. Hence, the plaintiff filed a civil suit for eviction and mesne profit at the rate Rs.15,400/- (Fifteen Thousand Four Hundred) per month till handing over of vacant possession of the suit premises.

3. The appellant/defendant filed his written statement wherein he admitted that he is the tenant of the plaintiff, boundaries & measurement

of the suit premises and monthly rent is also admitted. However, bonafide requirement for opening clinic is denied in toto and stated that apart from the suit premises, the plaintiff has another suitable accommodation in the city of Bhopal, which the plaintiff has suppressed. It is also pleaded that the total roof of the accommodation (suit premises) is vacant, which can be conveniently used for so called need to open a clinic. It was also pleaded that the plaintiff demanded Rs.5,00,000/- (Five Lakhs) from the defendant towards "Pagari" and also asked to increase the rent to Rs.25,000/- (Twenty Five Thousand), which was not acceptable to the defendant, therefore, the plaintiff has filed the suit on false grounds. It was also pleaded that initially the rent of the suit premises was Rs.14,000/- (Fourteen Thousand) per month which was enhanced to Rs.15,400/- (Fifteen Thousand Four Hundred) per month and an amount of Rs.45,000/- (Forty Five Thousand) was deposited towards security deposit. It was further pleaded that the plaintiff has filed the suit malafidely and prayed for dismissal of the suit with cost.

4. Trial Court has framed the issues on the pleadings of the parties and recorded the statements adduced by learned counsel for the parties and after hearing arguments on behalf of the parties, passed the impugned judgment and decree in favour of plaintiff/respondent. Being aggrieved by the impugned judgment and decree, appellant/defendant has preferred this appeal.

5. Learned counsel for the appellant/defendant submitted that the impugned judgment and decree is patently illegal and contrary to law and has been passed ignoring the settled principles of law. The findings recorded by the trial Court regarding bonafide requirement of suit premises is perverse because of misinterpretation of oral and

documentary evidence on record. In this regard, learned counsel for the appellant drew attention of this Court towards para 6 to 12 of cross-examination of Kamal Chand Nahar (PW-1) and para 8 and 9 of cross-examination of Nitin Nahar (PW-2) and submitted that suitable alternative accommodation is available with the plaintiff in the city of Bhopal, hence, bonafide requirement of suit premises has not been proved by the plaintiff, hence, the trial Court has grossly erred in decreeing the suit of the plaintiff. Hence, prays for setting aside the impugned judgment and decree with cost. In support of his arguments, learned counsel for the appellant has placed reliance on the cases of ***Raghvendra Kumar vs. Firm Prem Machinery & Co. (2000) 1 SCC 679, Deena Nath vs. Pooran Lal (2001) 5 SCC 705, Dinesh Kumar vs. Yusuf Ali (2010) AIR SC 2679, G.C.Kapoor vs. Nand Kumar Bhasin & others (2002) AIR SC 200***.

6. Per contra learned counsel for the respondent has supported the judgment and decree passed by the trial Court and submitted that the findings recorded by learned trial Court is just and proper as the same are based on proper appreciation of evidence on record, which cannot be said to be perverse and requires no interference and prayed for dismissal of appeal with cost. In support of his arguments, learned counsel for respondent has placed reliance on ***Raghvendra Kumar vs. Firm Prem Machinery & Co. (2000) 1 SCC 679, J.J.Lal Pvt. Ltd. & others vs. M.R.Murali & another (2002) 3 SCC 98, Prativa Devi (Smt.) vs. T.V.Krishnan (1996) 5 SCC 353 and Keshar Bai vs. Chhunulal Civil Appeal No.106 of 2014 judgment dated 07.01.2024 (Supreme Court)***.

7. I have considered the arguments of learned counsel for the parties, perused the record and gone through the citations upon which reliance has been placed.

8. It reveals from the record of the trial Court that in support of his pleadings, plaintiff-Kamal Chand Nahar has examined himself as PW-1, his son Nitin Nahar as PW-2 and one Brijendra Kumar Pandey as PW-3.

9. Kamal Chand Nahar (PW-1) has filed his chief-examination on affidavit under Order 18 Rule 4 of CPC. PW-1 has stated in para-1 of his chief-examination that suit premises which is marked with red colour in the plaint map was rented out to the defendant and now he requires the suit premises for opening medical clinic for his son Nitin Nahar. He further stated that he has no other suitable alternative accommodation in the city of Bhopal for the said purpose, however, he has sufficient funds for purchasing instruments, machinery etc. for opening the clinic. In support of his statement PW-1 has exhibited documents P-1 to P-10.

10. Nitin Nahar (PW-2) has also stated in his chief-examination filed on affidavit under Order 18 Rule 4 of CPC that he is a doctor and has secured degree of M.D. from Gandhi Medical College in May, 2009. Thereafter, he is in contractual service in Gandhi Medical College and Hamidiya Hospital, Bhopal but he is not satisfied with his contractual job and wish to open his own clinic, hence he requires the suit premises bonafidely for the said purpose. He further stated that he has experience of the field and since the suit premises is situated on main road, Raisen, hence it is suitable for opening clinic with all facilities. He also stated that he has sufficient funds for purchasing instruments, machinery etc for opening the clinic but does not have any other suitable alternate accommodation in the city of Bhopal for opening the clinic.

11. Brijendra Kumar Pandey (PW-3) has also supported the statements of PW-1 and PW-2. In cross-examination of PW-1, PW-2 and PW-3 no facts have occurred which shows that the plaintiff (PW-1) does not require bonafidely the suit premises for opening the clinic for his son Nitin Nahar (PW-2) or the plaintiff has another suitable alternative accommodation in the city of Bhopal for the said purpose.

12. Whereas, Hakimuddin/defendant who has examined himself as DW-1 has admitted in his cross-examination that he does not know where the plaintiff has another shop in the city of Bhopal and also admitted that the plaintiff did not talk to him about "Pagari". Defendant/appellant has not adduced any evidence which shows that the plaintiff has suitable alternate accommodation in the city of Bhopal for opening the medical clinic for his son.

13. There is no evidence on record that the plaintiff has filed a suit with any oblique motive, hence, the judgement relied upon by the appellant/defendant in the case of ***G.C.Kapoor (supra)*** is of no assistance to the appellant. Furthermore, there is no dispute regarding ownership of the suit premises of the plaintiff/respondent and it is also not disputed that the appellant is tenant of the suit premises.

14. It reveals from the record that after appreciation of evidence on record, learned trial Court has found that plaintiff/respondent has proved his pleading that he requires bonafidely the suit premises for opening the medical clinic for his son. In this regard learned trial Court has placed reliance on ***Ram Narain Arora vs. Asha Rani & ors. (1999) 1 SCC 141, M.L.Prabhakar vs. Rajiv Singhal (2001) 2 SCC 355, Raghvendra Kumar vs. Firm Prem Machinery & Co. (2000) 1 SCC 679, Prativa Devi (Smt.) vs. T.V. Krishnan (1996) 5 SCC 353, Prem Narayan***

Barchhiha vs. Hakimuddin Saifi (1999) 6 SCC 381, Uday Shankar Upadhyay & ors. vs. Naveen Maheshwari (2010) 1 SCC 503, Sunil Kulkarni vs. Jagdishsingh 2010 (1) MPLJ 427, Mohammad Ismail vs. Sikhandar Azad 2011 (1) MPLJ 571, Sitaram Patel vs. Bipin Chand Jain 2003 (2) MPLJ 312 and Jai Kishan vs. Mst.Mumtaz Begum (1984) 4 SCC 623.

15. In case of ***Prem Narayan Barchhiha (supra)*** Hon'ble Apex court has held that - in case if landlord seeking eviction under Section 12(1)(f) of the Act of 1961 of tenant from premises let for non-residential purpose, not obliged to aver in his plaint that he is in occupation of residential accommodation and that it is not suitable for non-residential purpose. Para 11 and 14 of the ***Prem Narayan Barchhiha (supra)*** are reproduced as below :

> "11. A plain reading of the provisions, extracted above, makes it clear that the Act maintains a clear distinction between the accommodation let for residential purposes and the accommodation let for non-residential purposes. Clause (e) deals with ground of eviction of a tenant from accommodation let for residential purposes. Under this clause eviction of a tenant can be sought if the landlord bona fide requires the accommodation let for residential purposes for occupation as a residence for himself or for any member of his family, provided 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 residential accommodation of his own in his occupation in the city or town concerned. Clause (f) deals with ground of eviction of a tenant from accommodation let for non-residential purposes and provides that the tenant can be evicted, if the landlord requires accommodation let for non-residential purposes, bona fide for the purpose of continuing or starting his business or that of 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. They [clauses (e) and (f)] are thus distinct and independent grounds having different ingredients and are thus mutually exclusive. That this is the purport of the said provisions has been endorsed by this Court in Panjumal Daulatram v. Sakhi Gopal [(1977) 3 SCC 284] and in Hasmat Rai v. Raghunath Prasad [(1981) 3 SCC 103 : AIR 1981 SC 1711].

14. It is futile to contend that accommodation is a neutral word taking in its fold both residential as well as non-residential purposes; the landlord ought to disclose the residential accommodation in his possession and show that it is not reasonably suitable for non-residential purposes when he is seeking eviction of the tenant from accommodation let for non-residential purposes. **The court cannot burden the landlord with additional conditions of disclosing particulars of residential accommodation in his possession and proving that it is not reasonably suitable for non-residential purposes.** Non-suiting him on such grounds will mean non-suiting him on extraneous grounds. It follows that the appellant has fulfilled the fourth requirement of clause (f) also."

16. In case of ***Raghvendra Kumar vs. Firm Prem Machinery (supra)*** Hon'ble Apex Court has held that the landlord is the best judge of his own requirement for residential or business purposes and has complete freedom in the matter. Para 10 ***Raghvendra Kumar vs. Firm Prem Machinery (supra)*** is reproduced as below :

"10. The learned Single Judge of the High Court while formulating the first substantial question of law proceeded on the basis that the plaintiff landlord admitted that there were a number of plots, shops and houses in his possession. We have been taken through the judgments of the courts below and we do not find any such admission. It is true that the plaintiff landlord in his evidence stated that there were a number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that the suit

> premises is suitable for his business purpose. 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 v. T.V. Krishnan [(1996) 5 SCC 353].) 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."

17. Though PW-1 has stated in his cross-examination para-6 that he has an open terrace of 2000 sq.ft., above the suit premises, but when the suit premises is on the ground floor at main road, it will not be appropriate for the plaintiff to construct the first floor and also plaintiff cannot even be directed for this purpose, as Hon'ble Apex Court has held in the case of ***Uday Shankar Upadhyay & ors. vs. Naveen Maheshwari (2010) 1 SCC 503.*** Para 7 of the above said judgment is reproduced as below :

> "7. 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 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. As regards the finding that the sons of Plaintiff 1 are getting a salary of Rs 1500 from the firm, in our opinion, this is wholly irrelevant and was wrongly taken into consideration by the High Court."

18. In the case of ***Baburao Bagaji Karemore & Others Vs. Govind and Others, AIR 1974 SC 405*****,** the Hon'ble Apex Court has held that "Though the appellate Court is entitled to examine and appreciate the

evidence in order to ascertain whether the finding of the trial Court is warranted, it will not interfere with it unless it is unsound, perverse or based on the grounds which are unsatisfactory by reason of material inconsistencies or inaccuracies. It should not lightly interfere with it merely because it takes a different view of the evidence." Para No. 29 of the judgment of ***Baburao Bagaji Karemore (Supra)*** is reproduced here as under :-

> "29. This finding has been attacked by the learned Advocate for the appellants on the ground that the appreciation of evidence by the learned Judge of the High Court is not warranted. It is needless for us to reiterate what has over a long course been observed in numerous decisions that a finding arrived at on an appreciation of conflicting testimony by a trial Judge who had the opportunity of observing the demeanour of witnesses while giving evidence should not be lightly interfered with merely because an appellate court which had not the advantage of seeing and hearing the witnesses can take a different view. Before a finding of fact by a trial court can be set aside it must be established that the trial Judge's findings where clearly unsound, perverse or have been based on grounds which are unsatisfactory by reason of material inconsistencies or inaccuracies. This is not to say that a trial Judge can be treated as infallible in determining which side is indulging in falsehoods or exaggerations and consequently it does not preclude an appellate court from examining and appreciating the evidence in order to ascertain whether the finding arrived at by the trial Judge is warranted. If that is not warranted, it can, on its view of the evidence, arrive at a conclusion which is different from that arrived at by the trial court. This aspect was discussed in detail in *Laxminarayan* v. *Returning Officer, C.A.No.1014 of 1972, D/- 28-9-1973 = reported in AIR* 1974 SC 66 to which we were parties."
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> (Emphasis supplied)

19. Co-ordinate Bench of this Court in the case of ***Noor Mohammad Vs. Mohammad Jiauddin and Others, 1991 MPLJ 503*** (Gwalior Bench), it was held that "Appellate Court not to interfere with finding on question of fact unless evidence of particular witness escaped notice or

there is sufficient balance of improbability to displace opinion as to credibility."

20. Similarly Co-ordinate Bench of this Court in the case of ***Ram Charan Singh Vs. Brij Bhusan Pandey and Others, 1997(1) MPLJ 565*** (Gwalior Bench) has held that "Trial Court having advantage of recording evidence and noticing the demeanour of witnesses. In such a situation the appellate Court should be slow to interfere with findings recorded by Trial Court."

21. Hence, as discussed above, in the considered opinion of this court, the judgment and decree passed by learned trial Court is in accordance with law and material available on record as also there is no perversity, hence, no interference is required.

22. Accordingly, impugned judgment and decree dated 06.09.2012 passed by 9th Additional District Judge, Bhopal M.P. in Civil Suit No.113-A/2010 is hereby affirmed. Consequently, the appeal is hereby dismissed. Cost of Civil Suit as well as the instant appeal will be borne by the appellant/defendant. Decree be drawn accordingly.

23. All pending I.As, if any, in the case are hereby dismissed.

24. Let record of trial Court be sent back to the concerned court alongwith copy of this judgment.

(AMAR NATH (KESHARWANI))
JUDGE

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