



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 7177/2023



-----Petitioner

Versus

-----Respondent

For Petitioner(s) : Mr. Jagdish Chandra Vyas
For Respondent(s) : Mr Avin Chhangani

HON'BLE DR. JUSTICE NUPUR BHATI

Judgment

REPORTABLE

Reserved on:- 03/01/2024

Pronounced on:- 18/01/2024

1. Though the matter was listed in 'Fresh' Category but on the joint request of both the counsel for the parties, the matter is heard finally today itself.

2. This writ petition has been filed under Article 226 and 227 of the Constitution of India with the following prayers :-

"that this writ petition may kindly be allowed and by way of an appropriate writ, order or direction the impugned judgment/ order dated 16.03.2023 (Anx.11) passed by the learned Appellate Rent Tribunal, Jodhpur Metropolitan, Jodhpur in rent appeal no. 38/2022 (NCV- 38/22) as also



the certificate dated 16.03.2023 may kindly be quashed and set aside and the Rent Petition no. 85/2015 (NCV No.122/15) filed by the respondent- applicant may kindly be dismissed."

3. Brief facts of the case are that the respondent-landlord-applicant Sushila Parihar preferred an application dated 02.03.2015 before the Rent Tribunal Jodhpur under section 9(i) of the Rajasthan Rent Control Act 2001 against the petitioner for eviction of one shop measuring 9ft x 18ft let out on rent for rupees 4,400/- to the petitioner who is running a shop in the name of M/S Gehlot Sabji Bhandar in the premise in dispute.

4. Furthermore the property in question was owned by father in law of the respondent-applicant who constructed various shops out of which one shop no.7 i.e., the suit property was let out to Smt. Puni Bai (mother of the petitioner) against the monthly rent of Rs. 25/-. The monthly rent was increased from time to time with the consent of the parties. After death of father in law of the respondent-applicant (Sh. Gordhan Ji), his son Kalu Ram i.e. husband of the respondent-applicant continued to collect the rent from all the shopkeepers. After death of Sh. Kalu Ram in the year 2007, the respondent-applicant became the owner of the entire property and is collecting the rent from the tenants since then. After death of Smt. Puni Bai in the year 2012 his son i.e. the present petitioner is running the shop in the name Gehlot Sabji Bhandar. In the year 2013 the monthly rent of the shop was



increased from rupees 2000/- to Rs 4000/- and thereafter the rent was increased to rupees 4400/-.

5. Furthermore, there are in total 12 shops in the Kalu Ram market which are rented to various other people and that one shop adjacent to the suit property is of the same size and is lying vacant which is in possession of respondent-applicant. The possession of the suit premises was sought by the respondent-applicant by filing an application under section 9 of the Rajasthan Rent Control Act 2001 (Annexure-1) on the ground that she is a 48 year old lady and is unemployed as her husband late Shri Kalu Ram died in the year 2007 and after his death the family has no source of income to maintain themselves. Respondent- applicant also has three daughters out of which one is unmarried and there being other rental income from other shops as the income is not sufficient for her and her daughter therefore she intends to start a business of artificial jewellery for which no premises is available with her. Thus she claimed reasonable and bonafide requirement of suit premises for business of artificial jewellery.

6. Thereafter the service of notice, the petitioner submitted a detailed reply (Annexure-2) to the petition and denied the claim of the respondent-applicant.

7. Thereafter the respondent-applicant filed a rejoinder (Annexure-3) and submitted evidence on affidavit of three witnesses including herself and her two daughters namely Smt. Sonia Parihar and Ms. Rajshree Parihar, however, Smt. Sonia Parihar did not appear in the witness-box and only the



respondent- applicant and Ms. Rajshree appeared for cross-examination whose evidence was marked as PW-1 & PW-2 (Annexure 4 & 5) respectively and petitioner was examined as DW1 and copy of evidence on affidavit was filed along with the cross examination (Annexure-6).

8. Furthermore an application under Section 21 of the Rajasthan rent Control Act 2001 was filed by the petitioner to direct the respondent- applicant to produce on record original documents which was dismissed vide order dated 09.09.2016 (Annexure-7) by the Rent Tribunal Jodhpur.

9. After hearing arguments, the Rent Tribunal dismissed the application filed by respondent-applicant vide judgement dated 27.07.2022 (Annexure-8). The respondent preferred an appeal (Annexure-9) which was allowed by the Appellate Rent Tribunal vide order dated 16.03.2023 (Annexure-11).

10. Aggrieved by the order dated 16.03.2023 passed by Appellate Rent Tribunal, the petitioner preferred this writ petition.

11. Learned counsel for the petitioner submitted that the Appellate Rent Tribunal has wrongly allowed the appeal filed by the respondent-applicant on the grounds as enumerated under Section 9(i) of the Rajasthan Rent Control Act 2001. He also submitted that on the perusal of the record passed by the learned Appellate Tribunal it is apparent that the final arguments on the part of the petitioner remained incomplete and thereafter the matter was posted for the completion of the final arguments. He also submitted that however due to unforeseen circumstances, the



counsel for the petitioner was not in a position to appear before the Tribunal and thus the Appellate Rent Tribunal was not justified in deciding the appeal on merits without completion of the arguments on the part of the petitioner.

12. Learned counsel for the petitioner further submitted that the respondent had already received the rent in advance up to the date 31.12.2015 on 18.02.2015 and during the currency of tenancy, the eviction petition was filed by respondent on 2.03.2015 without giving any notice for termination of the tenancy and thus the petition claiming for vacant possession of the premises is premature and the same was not maintainable. He also submitted that Appellate Rent Tribunal has proceeded to decide the appeal in favour of the respondent despite the fact that the respondent had concealed the material facts and did not disclose complete and correct facts before the court therefore the necessity shown by her cannot be considered to be reasonable and bonafide in any manner.

13. Learned counsel for the petitioner further submitted that the Appellate Rent Tribunal failed to consider the admission made by the respondent in paragraph no 6 of the rejoinder that all the shops except shop No. 6 situated in Kalu Ram Market and four shops situated in nearby property opposite Kumharo Ka Mandir belongs to her and the shops are already on lease. There was no justification for learned Appellate Rent Tribunal to arrive at the conclusion that no premises are available with the respondent-applicant to carry out her business. He also submitted that if at all



the respondent had bonafide requirement then the respondent-applicant would not have leased out the shops to other persons prior to filing the petition before the learned Rent Tribunal.

14. Learned counsel for the petitioner relied on the judgments passed by the Hon'ble Apex Court in the case of **Malluru Mallappa(D) Thr. Lrs vs Kuruvathappa** reported in (2020) 4 SCC 313; **C. Venkata Swamy versus H.N. Shivanna(D) by L.R. & Anr. Etc.** (Civil Appeal No. 670-671 of 2011); **Jagannath v.Arulappa & Anr.,** reported in **(2005) 12 SCC 303**; **H.K.N. Swami v. Irshad Basith** reported in **(2005) 10 SCC 243**, **Santosh Hazari Vs. Purushottam Tiwari (Dead) by Lrs.** reported in **(2001) 3 SCC 179**; **Madhukar and others v. Sangram and Others** reported in **(2001)4 SCC 756**.

15. Per contra Learned counsel for the respondent submitted that the respondent- applicant requires the rented property in dispute for starting a business of artificial jewellery and that the respondent is a lady of around 50 years and is unemployed and requires the shop in question to run business which is a bonafide necessity. He further submitted that respondent's husband died in 2007 and after his demise she has no means for livelihood and is facing hardship to earn her livelihood and moreover the respondent has three daughters out of which one is unmarried and the respondent needs to maintain her as well therefore she requires the rented shop in question.

16. Learned counsel for the respondent also submitted that the respondent does not have any other alternative shop to carry on



the business and the shop in question is 9x18 ft which is of the perfect size and at a perfect location to start the business as it is situated in the main market area having a huge space for parking where her business can flourish. He also submitted that the respondent's house is just behind the shop where she wants to start her business as being a widow lady, it will be convenient for her to run the business and take care of her daughter as well. He further submitted that as the shop in dispute is just behind the residence of the respondent, the daughter of the respondent would also be able to assist her in the business.

17. Learned counsel for the respondent relied on the judgments passed by the Hon'ble Apex Court in the case of **Ambadas Khanduji Shinde vs Ashok Sadashiv Mamurkar** reported in **(2017) 14 SCC 132; Akhileshwar Kumar & Ors vs Mustaqim & Ors.** reported in **(2003) 1 SCC 462; Bhupinder Singh Bawa vs Asha Devi** reported in **2016 DNJ (SC)109; Dhannalal vs Kalawatibai & Ors** (Civil Appeal No. 3653/2002).

18. Heard learned counsel for the parties perused the material available on record and the judgments cited at the Bar.

19. This Court observes that the petitioner has not denied the fact that the respondent/landlord is a widow lady having three children, out of which, one girl child is unmarried and is pursuing her studies. Furthermore, the respondent has specifically made out a case by way of filing the eviction petition that on account of death of her husband, the respondent has no other source of livelihood and is facing financial hardship in order to sustain





herself as well as her children. Thus, she has filed the eviction petition on the ground that the premises in dispute are required on account of bonafide necessity for running the business of artificial jewellery in order to maintain herself and her unmarried daughter. Moreover, the bonafide necessity of the respondent is to be decided by herself and even if alternate premises are available, then also it is for the landlord/respondent to choose a more suitable premise for carrying on the business by herself and the petitioner cannot dictate as to from which premise she should start the business.

20. Hon'ble the Apex Court in the case of **Bhupinder Singh Bawa Vs. Asha Devi** reported in **2016(10) SCC 209** has also held that "*it is perfectly open to the landlord to choose a more suitable premises for carrying on the business*". The respondent further submitted that as the premises in dispute is just behind her residence, therefore, it would be much suitable for her to run the business from the shop in dispute being close to her house where even her unmarried daughter would also be in a position to assist her in running the business of artificial jewellery.

21. This Court also observes that another judgment passed by the Hon'ble Apex Court in the case of **Dhannalal Vs. Kalawati Bai & Ors** reported in **(2002) 6 SCC 16**, the Apex Court has held as under:-

"A landlord cannot be compelled to carry on business in rented premises and the proved requirement cannot be defeated by the tenant submitting that the landlord can start or comfortably continue to run his business in rented premises"



"27. The bona fides of the need of the landlord for the premises or additional premises have to be determined by the Court by applying objective standards and once the Court is satisfied of such bona fides then in the matter of choosing out of more accommodations than one available to the landlord, his subjective choice shall be respected by the Court".

22. This Court further finds that the respondent has also submitted that the shop in dispute would be more suitable to her for starting the business as it is in the main market and it would be profitable for her to run the business of artificial jewellery and admittedly the petitioner, who is the tenant, cannot dictate that the respondent can run the business of jewellery from any other alternate shop. This Court also observes that the respondent, who is a widow lady having unmarried daughter is intending to open business of artificial jewellery is the best person to decide the place of starting her business and none other than her can take a decision for her to decide a suitable place for running the business. This Court finds that in the judgment titled as ***Kusumlata Sharma Vs. Arvind Singh*** reported in **2023 SCC OnLine SC 488** the Apex Court has held as under:-

"19. Noteworthy it is that it had not been the case of the respondents that they were not the tenants in the premises in question. The only attempt on the part of the respondents had been to suggest that other properties and accommodations were available with the family. Such suggestion on the part of respondents had not been accepted by the Rent Controller as operating against the assertion of bona fide requirement of the appellant. Such findings of the Rent Controller had essentially been the findings of facts on the basis of evidence on record. There was no scope for upsetting such findings on a rather vague ground of want of clarity about description of the property in question."



"23. Upshot of the discussion is that the findings on bonafide requirement of the appellant in relation to both these cases could not have been disturbed by the High Court on a rather nebulous and vague ground of want of clarity about identification of the property in question. Thus, the impugned orders deserve to be set aside and the orders of eviction deserve to be restored."

Another case titled as **Hukum Chandra (D) THR.LRS. Vs. Nemi Chand Jain & Ors.** reported in **2019(13)SCC363** the Apex Court has held as under:-

"19. Admittedly, respondent – landlord obtained vacant possession of the adjacent shop from the other tenant – Babulal on 14.11.2006 in pursuance of an order dated 01.09.2005 passed by the High Court in Second Appeal No.472 of 2002. But the learned Senior Counsel appearing for the respondent – landlord submitted that the decree for eviction of the said tenant – Babulal was on the ground of bona fide requirement of Rajesh Kumar Jain (other son of respondent – landlord) as envisaged under Section 12(1)(f) of the Act. It was submitted that respondent – landlord's another son Rajesh Kumar Jain has occupied the said adjacent shop and doing the business of "Sara". Respondent – landlord has four sons and the other shop vacated by tenant – Babulal is meant for the bona fide requirement of another son Rajesh Kumar Jain. If that shop is not actually occupied by the other son Rajesh Kumar Jain, the other tenant Babulal has a right to initiate the proceedings against the landlord for his re-entry in the said adjacent shop in terms of the provisions contained in Section 17 of the Act. Therefore, it cannot be said that alternative accommodation was available for the respondent – landlord's son Rajendra Kumar due to vacation of the said adjacent shop by another tenant Babulal."

"20. Considering the pleadings and evidence on record, the High Court rightly held that there is no ground to entertain the additional documents and no substantial question of law arises. Upon consideration of oral and documentary evidence, the first appellate court and the High Court recorded concurrent findings of fact that the suit shop is required bona fide for the son of the landlord for the purpose of doing business and that the respondent – landlord has no other reasonably suitable non-



residential accommodation for the business of his son. We do not find any good ground warranting interference with the impugned judgment and this appeal is bound to fail.”

23. This Court finds that mere existence of other properties which are levied by respondents would not enure to benefit of tenant/petitioner in the absence of any supporting material before Court to effect that they are reasonably suitable for the petitioner to run her business. Further, the petitioner is not able to demonstrate the extreme hardship caused to him upon vacating the premises in dispute. The litigation has consumed 10 years and thus, the hardship suffered by the respondent/landlord is more than the petitioner. Furthermore, the object of Section 9(i) of the Act of 2001 is to relieve landlords from hardship so that he gets suit premises vacated early for his personal use.

24. This Court also observes that there is one more aspect of the matter that it is obligatory upon the courts to weigh the comparative hardship of the landlord and tenant and the learned Rent Appellate Tribunal, Jodhpur upon weighing the said hardship has found landlord's needs of the premises as bonafide while considering the fact that the respondent is a widow lady having unmarried daughter as well as the financial hardships and considering the location of the shop in dispute has allowed the appeal in favour of the respondent while setting aside the decision and certificate passed by the learned Rent Tribunal. Thus the order dated 16.03.2023 passed by the Appellate Rent Tribunal, Jodhpur



does not require any interference and the writ petition is, therefore, dismissed.

25. Stay petition as well as all other pending applications, if any, also stand dismissed.

(DR. NUPUR BHATI),J

38-/surabhii/-

