

Rajender Kumar

Vs

Jamna Das Kotewala

Civil Appeal No. 3272 of 1989

(K. Jagannatha Shetty, R. M. Sahai JJ)

20.07.1990

JUDGMENT

R. M. SAHAI, J. -

1. The only question of law that arises for consideration in this appeal, directed against order of Rajasthan High Court in proceedings arising out of Rajasthan Premises (Control of Rent and Eviction) Act, is if the High Court in exercise of its jurisdiction as a second appellate court was justified in interfering with concurrent findings of fact of the two courts below that the need of the landlord was not bona fide and the order of eviction would result in greater hardship to the tenant.
2. Basis for eviction was the need of the landlord, to shift his electrical shop from rented premises to his own, mainly, for two reasons, one, that he was paying more rent and other that the shop was more suitable as principal Phillips dealer of electric goods were in that locality. Both were negated by the trial court and appellate court as landlord was a wealthy businessman owning number of shops and the difference in rent could not affect him. Further he was not under threat of eviction. And the market where he was carrying on business had of shops of electrical goods from where landlord returned highest turnover in the whole of Rajasthan in some years. It was also found that the tenant too has flourishing business of publishing and sale of books which he was running from two adjoining shops one of which was in dispute. But if the suit was decreed it would result in crippling his business.
3. In recording these findings the two courts below adverted to evidence on record. No material evidence was ignored nor any was misread. Even the High Court could not point out any, yet it proceeded to appreciate the evidence as legal approach adopted by the first appellate court, in applying more stringent standard than was permissible was faulty. For this reliance was placed on observations that the need must be "backed by extreme want or destitution" or the landlord should have "pressing necessity". But these stray observations have been picked up from the legal position summarised by the first appellate court as under :

"To get the premises vacated on the ground mentioned in Section 13(1)(h) it has to be proved that premises are required reasonably and bona fide and burden to prove all these three things is on the plaintiff. There must be an element of need as opposed to mere wish or desire. It must be backed by extreme want or destitution. Landlord should, in fact, be in need and his desire should not be fanciful. Facts should be proved from which irresistible inference can be drawn that plaintiff has a pressing necessity. A mere assertion that landlord requires the premises is not enough. At the same time element of 'must have' need not be an absolute or dire necessity.

Reasonable means that which is rational, just, not excessive. Bona fide means honest and not actuated by bad faith, or oblique motive.

Occupation of tenanted premises by landlord at higher rent alone or by itself is not sufficient and landlord is not entitled to eject tenant from the premises unless the premises occupied by him are shown to be unsuitable, inadequate or insufficient. Whether plaintiff proves that his necessity is both genuine and reasonable; that premises were required for augmenting his income as the income so far received was not sufficient for him to make the two ends meet there would be no question of mere desire but it would be a case of real requirement and genuine need."

Read in its entirety it is apparent that the court was not oblivious of correct legal approach. The claim of landlord was rejected not on stringent standard but on the test laid down by this Court that mere wish or desire as opposed to need or requirement did not entitle a landlord to seek eviction. Besides, there is also a finding on comparative hardship in favour of the landlord (sic tenant). Both the findings are questions of fact and the High Court under Section 100 CPC, as observed by this Court in *Mattulal v. Radhe Lal* ((1974) 2 SCC 365) could not have interfered with such findings.

4. Financial condition was not relevant as both the landlord and tenant are affluent and rich persons. If the tenant's turnover of books and stationery exceeded seven lakhs in 1973-74 and he owns four godowns and a printing press then the landlord, his wife and sons own 12 shops with one son running jewellery business and he himself returned highest turnover of electrical goods. It has been established that if decree for eviction is granted, the tenant cannot run business from remaining one shop, and he has no other alternate shop. The godown and printing press could not form alternative accommodation.

5. In the result this appeal succeeds and is allowed. The order of the High Court is set aside and that of the Additional District Judge is restored.

6. The tenant is directed to pay Rs. 250 p.m. as rent from August 1, 1990.

7. Parties shall bear their own costs.

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