

(3) (1)

of 6/11

**IN THE HIGH COURT OF JUDICATURE AT**  
**BILASPUR**

**SECOND APPEAL NO. 588 OF 2003**

Single Bench

1. SHIV SHANKAR SONI,  
AGED ABOUT 47  
YEARS.

2. RAVI SHANKAR SONI,  
AGED ABOUT 45  
YEARS

3. BHOLE SHANKAR  
SONI, AGED ABOUT  
37 YEARS.

ALL SON OF SHRI  
MADAN GOPAL SONI,  
RESIDENT OF HALWAI  
LINE, SADAR BADAR  
WARD, RAIPUR.

**APPELLANTS/  
PLAINTIFFS**

**VERSUS**

JAYANTI BHAI, AGED  
ABOUT 62 YEARS, SON OF  
SHRI LAKHMASI BHAI,  
RESIDENTS OF HALWAI  
LINE, SADAR BAZAR  
WARD, RAIPUR.

**RESPONDENT/  
DEFENDANT**

Civil Suit valued at Rs. 400/- and Court Fee affixed  
Rs. 64/-

First Appeal valued at Rs. 400/- and Court Fee affixed  
Rs. 64/-

This Appeal is valued at Rs. 400/- and Court Fee  
affixed Rs. 64/-

**APPEAL UNDER SECTION 100 OF CODE OF CIVIL**  
**PROCEDURE, 1908**

[Signature]

(24)

APR

**HIGH COURT OF JUDICATURE AT BILASPUR (C.G)**

**SECOND APPEAL No.588 of 2003**

Shiv Shankar Soni and others

Vs.

Jayanti Bhai

**JUDGMENT**

Post for 24.12.2004

Sd/-  
Sunil Kumar Sinha  
Judge

B.P. Sinha  
24/12/04

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**HIGH COURT OF JUDICATURE AT BILASPUR (C.G)**

**SECOND APPEAL No.588 of 2003**

Shiv Shankar Soni and others  
Vs.  
Jayanti Bhai

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Shri B.P. Sharma, Counsel for the appellants

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**JUDGMENT**  
(24.12.2004)

**Sunil Kumar Sinha, J**

Heard on the question of admission.

(2) This appeal has been filed u/s 100 of the Code of Civil Procedure against the Judgment and Decree dated 06.09.2003 passed in Civil Appeal No.29-A/2003 by the Fourth Additional District Judge, Raipur (C.G) arising out of the judgment and decree dated 22.4.2003 passed in Civil Suit No.67-A/2001 by XI<sup>th</sup> Civil Judge, Class-II, Raipur. The trial Court decreed the suit of the landlords for eviction from a residential premises (one small room) situated in the first floor of the 4 storayed building belonging to them. The lower appellate Court allowed the appeal of the tenant and has set aside the judgment & decree passed by the trial Court. The appellants/plaintiffs have filed this appeal against the aforesaid reversing judgment & decree.

(3) The case of the plaintiffs is that a residential house bearing No.11/194 (New No.44/45) situated in Halwai Line, Sadar Bazar Ward, Raipur, is the house belonging to the plaintiffs. The defendant is residing in the first of the house as

a tenant on a monthly tenancy. The plaintiffs filed the suit for eviction from the aforesaid rented premises on the ground of their bona fide requirement as according to the plaintiffs, there are 17 members in their family and it has become difficult for them to accommodate all of them in the house in question and they have no reasonably suitable residential accommodation of their own in their occupation in the city or township of Raipur. In fact, the plaintiffs took grounds specified in Section 12(1)(e) of the M.P. Accommodation Control Act 1961. The plaintiffs also took a plea that the rented accommodation is an old one and they are to demolish the same and thereafter a new construction is to be done which cannot be done without the accommodation being vacated. In this manner, the plaintiffs also took the ground specified in section 12 (1)(g) of the Act. They also took a ground u/s 12(1)(a) regarding arrears of rent in sum of Rs.260/- against the tenant.

(4) The defendant/tenant filed his written statement denying the contentions of the plaintiffs. It was pleaded by him that the number of family members has not been correctly stated by the plaintiffs. The complete house of the plaintiffs is a very big house and all the members can be accommodated in that house. Another rented accommodation of the plaintiff has also been vacated, therefore, some more additional rooms have become available to them. The accommodation is in good condition and there is no necessity of reconstruction and the plea taken about the demolition and reconstruction is false. In fact, the plaintiffs anyhow want to evict him from the suit

premises, therefore, the suit has been filed on the false and baseless grounds. He specially pleaded that the accommodation is not required bona fide by the plaintiffs. He also denied about the arrears of rent as has been pleaded by the plaintiffs.

(5) The learned trial Judge framed various issues in this case and after recording evidence of the parties decreed the suit of the plaintiffs on all the grounds taken by them.

(6) Against the aforesaid judgment and decree passed by the trial Court, the defendant (tenant) filed an appeal before the lower appellate Court. The lower appellate Court allowed the appeal and reversed the judgment and decree passed by the trial Court.

(7) Learned counsel for the appellant argues that the lower appellate Court committed an error of law in holding that the plaintiffs were not in bona fide requirement of the suit premises and the judgment of the Court below is perverse on this point. He also argues that in fact, the accommodation has become unsafe and unfit for human habitation and is required bona fide by the landlords for reconstruction and the same cannot be carried out without the accommodation being vacated. He also argues that it has been established on record that the landlords are not having any other reasonably suitable residential accommodation of their own in their occupation in the township of Raipur, therefore, the trial Court had rightly passed a decree in their favour and the reversing findings of the lower appellate Court are perverse. Further he submits

that the reversing finding in relation to arrears of rent is also perverse.

(8) I have heard learned counsel for the appellant and have also perused the records of the two courts below and the judgment and decree passed by them. First of all, it is important to mention this fact here as to what is the nature, situation and size of accommodation for which the present suit has been filed. It is undisputed that the rented accommodation is a small room and the size of the room is 12 ft. x 7.3 ft. This is clear from the additional map filed by the plaintiffs which shows the situation of the accommodation and the rooms available on various floors of the entire premises of the plaintiffs. It is also admitted that the room is on the first floor of the house. The map also shows that the house is a multi-storied building in which there are 4 floors including the ground floor and there are various rooms on each floor. Now the question is as to whether about 16-17 members of the family can be accommodated in the said house excepting one room for the tenant, or not? The plaintiffs have examined only one witness in support of their case. He is Bhole Shankar (Plaintiff no.3 as P.W.1). He has only stated that there are 17 members in his family and all are residing in the same house, they are facing some difficulty in residing in the said house. Therefore the rented room is also required by them. He has admitted in para 5 of his evidence that their family was also residing on rent in the said premises and later on the same was purchased by them. He also stated that there were 4

tenants in the house, out of them two have already vacated their respective accommodations and the possession has been received by them. Except the above, nothing has been deposed by him. The first appellate Court has considered his evidence vide paras 10 & 11 of the Judgment and has reversed the finding of the trial Court holding that in fact, the bona fide need of the plaintiffs is not proved by them. It has also referred to the evidence of the defendant who was examined as D.W.1 and has deposed that the house of the plaintiffs is having 4 - 6 rooms on each floor. The lower appellate Court has determined that in fact, the house of the plaintiffs is having 14-15 rooms alongwith the attached facilities and unspecified requirement shown by them does not seem to be bona fide. In fact, the plaintiffs have not taken any specific pleading in relation to their requirement which can be said to be a bona fide requirement within the meaning of section 12(1)(e) of the Act.

(9) The legislature has used two important words in subsection (1)(e) of Section 12 of the Act, these are "required" and "bonafide". The word "require" carries a greater meaning than the word "desire". The distinction lies in degree of need. The word "require" as has been used by the legislature in the aforesaid provision carries an element of "must" whereas the word "desire" does not carry any such meaning or weightage. The user of this term and placement thereof in one of the important grounds for eviction goes to show the intention of the legislature that the need of the premises should be a real need and should not be a desire simplicitor that the landlord wanted

to get his premises vacated for some reason. That is to say that an important element of real need always attaches with the word "require". In fact, this important word used in this benevolent legislation cannot be meant as a mere wish or thinking of the landlord, which may depend upon his convenience or having some more better facilities for him or his family. The user of the word "bona-fide" with the word "require" clearly goes to show that the action of the landlord should not be arbitrary or a devised method of forcibly throwing the tenant from the rented premises. In fact, the requirement must be proved sincere, honest and genuine, then only the same can be classified as a "bonafide requirement" of the landlord. The Hon'ble Apex Court in the matter of **Pratap Rai Tanwani and another -Vs- Uttam Chand and another** reported in **(2004) 8 SCC 490** held that "one of the grounds for eviction contemplated by all the legislations which otherwise generally lean heavily in favour of the tenants, is the need of the owner landlord to have own premises, residential or non-residential, for his own use or his own occupation. The expressions employed by different legislations may vary such as "bonafide requirement", "genuine need", "requires reasonably and in good faith", and so on. Whatever be the explanation employed, the underlying legislative intent is one and that has been demonstrated in several judicial pronouncements." (Please see para 12 of the Judgment).

Referring to the decisions of the Apex Court in the matter of **Gulabbai -Vs- Nalin Narsi Vohra** reported in **(1991) 3 SCC**



483 and Bega Begum -Vs- Abdul Ahad Khan reported in (1979) 1 SCC 273, the apex Court further held that "the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire". (Please see para 14 of the Judgment). Referring to another decision reported in (1999) 6 SCC 222 (Shiv Sarup Gupta V. Dr. Mahesh Chand Gupta), the apex Court held that "the the concept of bonafide 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 refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself—whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide." (Please see para 15 of the Judgment).

In the opinion of this Court, in fact, if the aforesaid tests are applied in the present matter, the plaintiffs could not establish their bonafide need for a very small room of 12 ft. x 7.3 ft. size and the reversing judgment and decree of the appellate Court is well founded in this regard.

(10) Coming to the next question of requirement for reconstruction, this Court can only say that the plaintiffs could not plead or establish any such ground as has been mentioned in section 12(1)(g) of the Act. Section 12(1)(g) reads as under:

- (g) that the accommodation has become unsafe, or unfit for human habitation and is required bonafide by the landlord for carrying out repairs which cannot be carried out without the accommodation being vacated."

The pleadings in this regard are made vide para 8 of the plaint which are as follows:

"(8) यह कि, वादग्रस्त भवन बहुत पुराना और जर्जर हालत में है तथा वादीगणों को उसे गिराकर पुनः निर्माण भी कराना है। वादीगणों का रायपुर शहर में कोई अन्य मकान युक्तियुक्त रूप से उपयुक्त रहवास हेतु अन्य निजी स्थान अधियोग में नहीं है।"

It is clear from the aforesaid paragraph that the plaintiffs are claiming that they will demolish the construction and thereafter they will carry on new construction (reconstruction) works. This Court is surprised to see the pleadings of above nature. How a single room situated on the first floor of a multi-storayed building can be demolished for the purposes of reconstruction. It is not the case of plaintiffs that they want to demolish the entire building and thereafter they want to raise certain new construction over the suit land. Though the first appellate Court has not dealt with the matter on this line, but it has dealt vide para 18 of the judgment holding that for the purposes of condition of the building and reconstruction, no documentary or oral evidence has been led by the plaintiffs.

Even the certificates from the Municipal Corporation or the map from the Architect or the other documentary evidence which could have been produced in this regard have not been produced by them. The first appellate Court has rightly reversed the finding in this regard and this Court also feels that the reversion is proper. Not only this, the plaintiffs have also not established that there was some arrears of rent which was calculated @ Rs.260/- payable by the defendant. The finding in this regard, arrived at by the trial Court is not correct as the same is not based on any positive evidence on record and the First Appellate Court has rightly held that the plaintiffs could not prove that the defendant has not paid arrears of rent as claimed by the plaintiffs.

(11) In the opinion of this Court, there is no perversity in the finding recorded by the lower appellate Court that the plaintiffs could not establish that the accommodation was bonafidely required by them for residence of their family members or it is bona-fide required for carrying out repairs or reconstruction as the same has become unsafe or unfit for human habitation and the repairs cannot be carried out without the accommodation being vacated or the defendant was in arrears of rent.

(12) This Court is also conscious about the jurisdiction to be exercised u/s 100 of the Code of Civil Procedure. The Hon'ble Apex Court has laid down in the matter of **Roop Singh (Dead) through LRs -Vs- Ram Singh (Dead) through LRs** reported in **(2000) 3 SCC 708** that under Section 100 of the Code of Civil Procedure, the jurisdiction of the Court to entertain a second

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appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with the pure questions of fact while exercising its jurisdiction u/s 100 C.P.C. It has been further laid down by the Apex Court that the existence of substantial question of law is the *sine qua non* for the exercise of jurisdiction under the amended provisions of Section 100 of the Code of Civil Procedure and unless such questions are involved, the appeals are not to be entertained (Please see Thiagarajan and others Vs. Sri Venugopalaswamy B. Koll and others reported in (2004) 5 SCC 762).

(13) Since no substantial questions of law are involved in this case, this Court is not inclined to interfere in the judgment and the decree passed by the lower appellate Court and the appeal is required to be dismissed at the admission stage itself. Accordingly, the appeal is dismissed at the admission stage with no orders as to costs.

Sd/-  
Sunil Kumar Sinha  
Judge

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28.12.04