

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Civil Second Appeal No.513/2003

Tikam Chand S/o Shri Mohan Lal
...defendant-appellant

Versus
Harbans Lal S/o Shri Inder Lal
...plaintiff-respondent

AND
Rajendra S/o Shri Sohan Lal
...defendant no.1-respondent

Date of Order :: 31.10.2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri P.S. Shukla, Counsel for defendant-appellant
Shri Reashm Bhargava, Counsel for plaintiff-respondent

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By the Court:-

Heard learned counsel for the parties.

The plaintiff-respondent filed a suit for eviction in respect of rented shop in the lower court, which was dismissed. However, on an appeal filed on behalf of the plaintiff, the learned first appellate court decreed the suit of the plaintiff on the ground of personal bona-fide necessity.

The learned counsel for the appellant has argued that there was no threatening in the present case for vacation of shop which is occupied by the plaintiff as a tenant, therefore the necessity of shop assessed by the first appellate court cannot be said to be bona-fide, and the judgment and decree passed by the first appellate court is liable to be set aside. Whereas, the learned counsel for the plaintiff-

respondent has supported the judgment of the first appellate court.

I have considered the submissions of the learned counsel for both the parties in the light of the finding recorded by the first appellate court in respect of bona-fide necessity of the rented shop. The first appellate court has recorded a finding that the plaintiff is doing his business in a shop which is on rent and he wants to shift his business in his own shop. The question of comparative hardship as well as partial eviction has also been considered by the first appellate court.

After considering the submissions as well as finding of the first appellate court, I find that the question of bona-fide necessity in the facts and circumstances of the present case is purely a question of fact, and there is a finding of fact by first appellate court, which cannot be interfered with by this court in second appeal under Section 100 of the Code of Civil Procedure.

No substantial question of law is involved in this second appeal and the same is accordingly dismissed at admission stage itself with no order as to costs.

(Narendra Kumar Jain) J.

//Jaiman//

S.B. Civil Misc. Stay Application No.2371/2003

In

S.B. Civil Second Appeal No.513/2003

Tikam Chand S/o Shri Mohan Lal
...defendant-appellant

Versus

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By the Court:-

Consequent upon dismissal of the second appeal itself, the stay application filed therewith, does not survive and the same is also dismissed.

(Narendra Kumar Jain) J.

//Jaiman//