

## **HIGH COURT OF Jammu And Kashmir AT JAMMU**

CSA No.04/2013  
CMA No. 04/2013

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Subash Chander Mahajan vs. Rakesh Kumar Mahajan

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### **Coram:**

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**Hon'ble Mr. Justice Bansi Lal Bhat, Judge**

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### **Appearing Counsel:**

For the appellant (s): Mr. Sunil Dutt Sharma, Adv.

For the Respondent (s): Mr. O.P.Thakur, Advocate

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1. Whether to be reported in :  
**Yes/No/Optional**  
Press/Journal/Media
  2. Whether to be reported in : **Yes/No**  
Digest/Journal
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This is a Civil Second Appeal against the judgment and decree passed by the learned Principal District Judge, Jammu on 31.10.2012 by virtue of which, Civil Ist Appeal filed against the judgment and decree dated 15.12.2005 passed by the learned City Judge (Sub Judge), Jammu decreeing the suit of respondent for ejectment of appellant from the shop, was dismissed. This is to determine, whether a substantial question of law is made out for admission of Civil Second Appeal.

Respondent sought ejectment of appellant from the suit shop on the ground that he had acquired exclusive ownership rights of the suit shop situated in Lakhdata Bazar, Jammu in consequence of family settlement dated 29.6.1990 and he required the suit shop for his personal use and occupation for running

the business of sale of Soya Nuggets manufactured by the firm of which he was a partner. The appellant defended the suit before the trial court on the ground that there was no relationship of landlord and tenant between the parties. He also denied the factum of suit shop having fallen to the share of plaintiff and also contested his claim of personal requirement. The parties joined ten issues covering the entire gamut of controversy *inter se* the parties.

On consideration of evidence brought on record during the trial, the learned trial court returned the findings on vital issues in favour of respondent and decreed the suit in his favour. On reappraisal of evidence, the learned District Judge confirmed the findings in appeal. The affect of concurrent findings of fact is that the respondent is proved to have acquired exclusive ownership in respect of suit shop under the family settlement; and that his requirement of the suit shop to expand his business, is reasonable and *bonafide*. The trial court as also the 1st Appellate Court arrived at the conclusion that the respondent would be put to disadvantageous position in the event of refusal of relief of ejection whereas the appellant could shift the business to his own shop without suffering any financial loss. The appellant seeks to assail the impugned judgment and decree on the ground that the courts below have placed more reliance on the evidence adduced by respondent and the 1st Appellate Court has failed to notice that the factory of the respondent manufacturing Soya Nuggets had been closed down and the suit shop was no more required for expansion of business.

The grounds urged do not constitute substantial questions of law justifying the admission of Civil

Second Appeal. In view of the concurrent findings of fact based on evidence on record which includes documentary evidence and in absence of allegations that the findings arrived at are perverse, no substantial question of law can be said to have been made out by the appellant. It is well settled that concurrent findings of fact, howsoever erroneous, cannot be disturbed in second appeal. In so far as the factum of respondent's Soya Nuggets manufacturing factory having been closed down is concerned, the same does not appear to have been raised as an issue requiring adjudication at the trial. Even otherwise such a fact would not disentitle the respondent from staking his claim for ejectment on the ground of bonafide personal requirement which could be more pressing to set up some other business once the factory manufacturing Soya Nuggets closed down.

In view of the foregoing discussion, I find that no substantial question of law arises for consideration of the court. The appeal alongwith connected CMA, is accordingly dismissed.

**( Bansi Lal Bhat )  
Judge**

Jammu:26.02.2014.  
RSB, Secy

