

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CSA No. 06/2011(O&M)

Reserved on 27.12.2018

Date of judgment:- 28.02.2019

Kuldip Raj

... Appellant

Vs.

Pawan Kumar

... Respondent

Coram: HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE

Appearance:-

For the Appellant (s) : Mr. Vikas Magotra, Advocate.

For the Respondent(s) : Mr. L.K. Sharma, Sr. Advocate with
Mr. Vishal Sharma, Advocate.

Rajesh Bindal, J

1. The present second appeal has been filed by the tenant against the concurrent findings of fact recorded by the Courts below, whereby the suit filed by the predecessor-in-interest of the respondent, seeking eviction of the appellant was decreed. Present appeal was admitted for consideration of the following substantial question of law:-

“Whether the entire evidence has not been properly appreciated as required in terms of Order 41 Rule 31 CPC ?”

2. Learned counsel for the appellant/tenant submitted that suit was filed by the father of the respondent, seeking eviction of the appellant merely on two grounds, namely, personal necessity and reconstruction. It was claimed that suit property had been purchased by the deceased-Krishan Chander for settling his son, namely, Pawan Kumar, who is now representing the deceased-Krishan Chander. The claim made by the plaintiff regarding *bonafide* need of the

property was specifically denied in the written statement filed, to which no replication was filed by the plaintiff. Though number of issues were framed, however, core issue required to be considered by the Court below was regarding personal necessity of the plaintiff and requirement of shop for reconstruction. It was claimed by the respondent that shop in question is adjoining to their other shop and they wanted to reconstruct the same and add to the existing shop for expansion of business for requirement of the same especially for Pawan Kumar and he had to be settled. The size of the shop is said to be 9' x 25' feet or 10 ½ to 24 (two different dimensions available on record). The claim that the son for whose necessity the shop in question was sought to be vacated was dependant on the plaintiff, was found to be contrary to record, as he was partner in the firm. The Partnership Deed was executed on 01.04.1992. Suit property had been purchased by the deceased-plaintiff on 25.02.1991. The plaintiff was evasive on many of the issues as even the interrogatories were not properly responded to. But this fact has been ignored by both the courts below. Whatever had been admitted by the plaintiff in the interrogatories deserves to be relied upon in evidence, as the same amounts to admission. However, the courts below had totally ignored that part of the evidence. There is no evidence produced on record, which has worth reliance, showing that the property is in such a dilapidated condition that it required reconstruction. It was submitted that the courts below had not properly appreciated the entire evidence produced on record by the appellant. The judgment and decrees of both the courts below deserve to be set aside and the matter be remitted back for reconsideration.

3. On the other hand, learned counsel for the respondent submitted that the scope of interference in a second appeal by the High Court is very limited. The question of law got framed by the appellant is academic. Nothing specific has been referred to by him for the court to reach to a conclusion that any of the finding recorded is perverse. Once the courts below have taken a possible view on appreciation of entire evidence, merely because a different

view is possible on re-appreciation of evidence, interference in the judgment and decrees of the courts below will not be called for. All the issues framed by the trial court have been considered with reference to the evidence produced on record. Merely because the appellant has referred to some words recorded or said here and there will not be enough to reach to a conclusion that the evidence produced on record has not been appreciated. In fact, the shop in question had been purchased by the deceased-Krishan Chander with a view to settle his son in a separate business. He had six sons and as a head of the family, it was his responsibility to settle them after their education was complete. There was no requirement to prove his family details. Merely because he had been added as a partner in a firm prior to filing of suit for eviction, will not mean that he was settled in business independently. In fact, the idea was to make him responsible and learn the techniques so that he is able to conduct his business independently. Separate business for Pawan Kumar was required, as the brothers were not pulling on well. They were living separately and even the respondent had constructed his house separately after the death of the father.

4. It was further submitted that the shop in question is a kacha shop, as has been recorded by the lower appellate court and the respondent wanted to reconstruct the same. The *bonafide* need of property has to be considered as per the wishes of the landlord and not what is dictated by the tenant.

5. Heard learned counsel for the parties and perused the paper book and the relevant record.

6. The facts of the case, as are evident from record, are that the predecessor in interest of the respondent filed a suit for ejection of the appellant. The premises in question is a shop measuring about 10' x 24'. The same was purchased by the predecessor in interest of the respondent vide Sale deed dated 25.02.1991. The purpose for which eviction of the appellant was sought was to settle the present respondent- son of the plaintiff in a separate

business. The idea was also that the shop in question, being an old constructed building, was to be re-constructed for the purposes of business and residence of the respondent. In fact the plaintiff had got even permission from the Municipal authorities for re-construction of the same vide communication dated 22.02.1992. When despite requests made to the appellant to vacate the shop needful was not done, a suit for permanent and prohibitory injunction was filed by the appellant against the plaintiff (now deceased). Subsequent thereto, the suit was filed by the predecessor in interest of the respondent, seeking eviction of the appellant from the premises in dispute. After completion of the pleadings, the learned trial Court framed the following issues:-

- “1. Whether the suit has not been filed by a competent person?
OPD
2. Whether the suit is misconceived and it does not fulfill the requirement of Section 11(h) of J&K Houses and Shops Rent Control Act? OPD
3. Whether the present suit has been filed with mala fide intention to pressurize the defendant for enhancing the rent?
OPD
4. Whether the plaintiff has no cause of action? OPD
5. Whether the suit is not properly verified. If so, what is its effect? OPD
6. Whether the defendant has not attorned the plaintiff in rent deed dated 16.09.1991 was got executed fraudulently? OPD
7. Whether the suit shop is required by the plaintiff for use and occupation of his son and the need of the plaintiff is greater than that of the defendant? OPP
8. Whether need of the plaintiff and defendant can be met by partial eviction? OPP

9. Whether suit shop is required by the plaintiff for reconstruction and such reconstruction will be for the benefit of public at large? OPP”

7. The trial Court decreed the suit. The First Appellate Court confirmed the judgment and decree of the trial Court. It is against concurrent findings of facts recorded by the Courts below that the present appellant-defendant is before this Court.

8. A perusal of the substantial question, as was sought to be raised by the appellant, shows that nothing specific as such has been narrated as to which part of the evidence led by the parties had been ignored or misread by the Courts below. However, there is no dispute on the principle of law that the Court is bound to consider and appreciate the evidence led by both the parties in any litigation.

9. Learned counsel for the appellant, with a view to point out that the findings recorded by the Courts below are perverse, has referred to the pleadings whereby there had been denial that the requirement of the respondent was *bonafide* and further that the present respondent, for whose use and occupation the premises are required to be vacated, is already a partner in the business of his father (now deceased). It was further argued that the hardship of the appellant was more as compared to the respondent. He had also referred to the answers to certain interrogatories, which, according to him, amounted to admission.

10. It is a fact that every father considers it to be his duty to settle all his children. The daughters have to be married and settled in their families whereas the sons have to be settled either in business or in employment. The case in hand is also of one of that kind. The deceased father of the respondent had six sons and he wanted to settle the respondent independently in a business and the shop in question was purchased only for that purpose. It is his specific

case pleaded and proved. It has further come on record that the predecessor in interest of the respondent wanted to re-construct the shop and for that purpose he had obtained the requisite permission from the Municipal authorities. No doubt, the predecessor in interest of the respondent had other premises but those are being used by his other sons for carrying out their business. The respondent had to be settled separately as there being family dispute, all the sons could not carry on in the same business. The evidence of the parties has to be appreciated in that light.

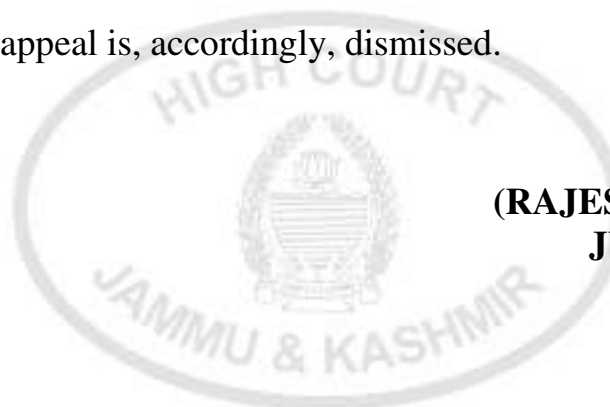
11. In any civil dispute the Court, while determining the same, has to examine the findings on the basis of preponderance of evidence and see as to whether the view expressed by the Court below is possible or the same could not possibly be taken. Merely because another view is possible, the High Court, in its appellate jurisdiction, will not interfere with the findings so recorded. Merely because the appellant had been able to produce on record some material to show that the respondent is a partner in the firm being run by his deceased father and was so during the eviction proceedings, will not make any difference as the idea was to let him have experience and be responsible to take up the business independently. Further a person/ward for whose benefit a building is sought to be evicted is not required to sit ideal for entire duration of litigation which may take decades. He has also to earn his livelihood as the tenant was earning while being in possession of the shop in dispute. Change in facts and circumstances during the pendency of the litigation had to be such, pleaded and proved, which altogether take away the cause of action. These facts are missing in the present case.

12. As far as comparative hardship of the landlord and tenant is concerned, in my opinion the landlord will certainly has an upper edge. He being the owner of the property, should be allowed to enjoy its fruits, by settling his dependents. It is only when requirement is held to be totally without any basis that a tenant will have an edge and can claim that his hardship will outweigh

that of the landlord. No doubt, the tenant's claim is that he is in possession of the shop and is earning his livelihood there from but one fact has to be kept in view that the tenant should not think that he can remain in possession of a building for all times to come and cannot think of making alternate arrangements. He may be liable to eviction in accordance with law. Reason that for renting other shop he may have to pay some Pagri, may not carry any weight and can take away the right of the landlord to evict the tenant for his *bonafide* requirement.

13. For the reasons mentioned above, I do not find that any substantial question of law arises in the present appeal. The findings recorded by the Courts below cannot be said to be perverse, requiring interference by this Court in second appeal.

14. The appeal is, accordingly, dismissed.



(RAJESH BINDAL)
JUDGE

Jammu
28.02.2019
Anil Raina, Secy

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes