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SA-234-2012

# IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

#### **BEFORE**

#### HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

#### SECOND APPEAL No. 234 of 2012

## SMT.KAMLA AND 5 ORS.

Versus

## RAMESH CHANDRA THRU.KARTA HUF LRS.DECD,SHANTI BAI SMT.NIRMALA AGARWAL AND 3 ORS.

Appearance:

Shri Sunil Jain, learned Senior counsel with Ms. Nandini Sharma, counsel for the appellant.

Shri Chetan Jain, counsel for the respondent.

Heard on: 01.04.2025

Delivered On: 24.04.2025

## **JUDGEMENT**

With consent of both the parties, the appeal is heard at motion stage at admission.

2. This Second appeal under Section 100 of Civil Procedure Code (for brevity, CPC) has been filed by the appellant against the impugned judgment and decree dated 14.02.2012 passed by the Third Additional District Judge, Ratlam in Regular Civil Appeal No. 09-A/2011 confirming the Judgment and decree dated 30.07.2010 passed by First Civil Judge, Class-I, Ratlam in Civil Suit No.31-A/2006 wherein the suit filed by the plaintiff/respondent for eviction of the suit premises have been allowed under Section 12(1)(f) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as "The Act of 1961").



- 3. Shron of details brief facts emerged from the record are that the plaintiff/respondent being Karta of Joint Hindu Family has filed a suit before the learned trial court for eviction of the suit Shop (hereinafter referred to as the "Suit Shop") situated at Ground Floor of House No.62, Mohalla Manak Chouk Ratlam, District Ratlam. The said house contains a three story building. The said Suit Shop is east facing. Father of the appellant has taken the same on rent by written Kirayanama, who was the tenant in the said Suit Shop since 26.03.1966. On 13.12.1991. The firm Vardichand-Ramnarayan, which was in the partnership of Ramchandra, Babulal and Mohanlal, was terminated and the assets were partitioned. As per that partition, the plaintiff/respondent has received the said house No.62, Manak Chouk Ratlam in partition being the legal Heirs of Late Ramchandra and the defendant was also intimated in the year 1991 with regard to the partition of the suit premises. Thereafter, the defendant has started to pay the rent to one Rameshchandra/plaintiff till 31.01.1995 even after receiving the notice of eviction and the respondent/defendant was continued his business in the said Suit Shop single handedly even after death of his father.
- 4. The ground for filing the eviction suit is mentioned that the plaintiff is having a grocery shop and he further wants eviction of the suit shop for business of younger brother Mehesh after merging the small shops adjacent to the suit shops. It is also mentioned that at the time of filing of the suit, both the brothers were indulged in a small shop after parting the same in two shops which is insufficient for them. It is also mentioned in the plaint that the Suit shop was rented to the defendant for the purpose of grocery whereas at



present he is indulged in the business of Agarbatti, Lobhan and Dhoop etc. and the same is flammable items, therefore, there is a fear of fire also. That apart, the defendant has not paid the rent since 01.02.1995 to 31.03.1995 even after the notice of eviction. During the Course of arguments, learned Senior counsel for the appellant submits that an application under Order 41 Rule 27 of CPC i.e. I.A. No.9662/2024 is also pending for taking the map of suit shops on record. Hence, the suit was filed for eviction, payment of remaining rent amount and other expenses.

5. In rebuttal, before the learned trial Court, the defendant has however admitted that the Suit Shop were rented at that time in the name of firm Vardichand-Ramnarayan through partners Ramchandra, Babulal and Mohanalal which was mentioned in the revenue records Bhawan No.15/48, but he has denied about the fact that the plaintiffs are the present owner and are Karta of Hindu Joint Family. He has also no knowledge about the House No.62 in which the Suit Shop is established, but admitted that 51 years ago, the said suit shop was taken on rent from Vardichand-Ramnarayan by his father. The defendant has objected that the suit is not maintainable being non-joinder of the parties. The defendant has admitted that earlier, he received the rent receipt in the name of Vardichand-Ramnarayan, but since last 10 years, he has not received any receipt and even no information of terminaition of the Firm as well as partition of the house was given to him. The defendant has denied the factum that the relationship of landlord and tenant could not be established in the present suit. It has also been averred that Ramchand and Mahesh are already doing their business in 22x25 ft shop



and a godown of 25x15 is also attached with the said shop, therefore, they already have sufficient space for their business. The defendant has also denied the business of Dhoop, Agarbatti etc. in the said suit shop, he has alleged that the plaintiff wanted to re-rent the said suit shop after taking Rs.50000/- as pagri amount. It is also submitted that the other shops adjacent to the suit shop has already been evicted by the appellant and have already sold out to the earlier tenant also. Therefore, the plaintiff is having similar aim to sold out the present suit shop also and having no bonafide requirement. So far as the submissions of taking the map on record is concerned, counsel for the respondent has replied that the said map was already in possession of the appellant at the time of pendency of suit as well as first appeal also, but the same, at this stage, in not helpful for consideration of this second appeal. The defendant has stated that the plaintiff is already having other spaces in Ratlam and he can use the same also for business purpose, but by not doing so, the plaintiff has filed the suit for eviction of the defendant which is not maintainable.

6. Based on the aforesaid pleadings of the parties, the learned trial Court has framed as many as 09 issues and and vide the impugned judgment concluded that (i-a), the plaintiff has received the suit shop in partition; (i-b) the plaintiff is having all right to file the suit being Karta of Hindu Undivided Family; (ii) the plaintiff is in need of the suit shop and in requirement for business of Mahesh Kumar and having no other suitable place for such business; (iii) not found that the defendant is indulged in flammable items in the suit shop; (iv) plaintiff is entitled to get the remaining rent but not the



expenses of notice; (v) suit accepted as per Clause 59 of impugned judgment; (vi) non-joinder of parties are not accepted; (vii) the relationship of tenant and landlord is established (viii) other shops were found to be sold by the plaintiff to the respective tenant but the same is not having any effect to the present suit and; (ix) Ramesh Chandra and Mahesh Kumar were found to be indulged in the business in one shop by parting the same, but on that basis the bona fide requirement is not affected.

- 7. The learned trial Court, after appreciation of the record and evidence available, has decided the aforesaid issue as framed and passed the final judgment and decree dated 30.07.2010 in favour of the plaintiff and directed the defendant to vacate the suit shop.
- 8. Being aggrieved by the judgment and decree dated 30.07.2010, defendant has filed an appeal before the learned Addition District Judge, Ratlam. The learned First appellate court dismissed the appeal of the defendant on 14.02.2012 by affirming the judgement and decree dated 30.07.2010 passed by learned trial Court. Hence, the present second appeal has been preferred on behalf of the defendant/appellant before this Court.
- 9. In support of the appeal, the learned Senior counsel for the appellant/defendant has submitted that the learned trial Court has passed the impugned judgment and decree of eviction under Section 12(1)(f) of the M.P. Accommodation Control Act wrongly without considering the fact that out of the total six shops, the plaintiff has already sold out three shops to their respective tenants only at the time of pendency of the suit before the



trial Court and later on two shops were also vacated and sold at the time of pendency of this appeal and the last one which is rented to the present appellant as suit shop. The learned trial Court as well as the learned first appellate court have wrongly considered that the plaintiff is in bonafide requirement of the suit shop. Therefore, the judgment and decree passed under Section 12(1)(f) of the Act is not in accordance with law and facts. Since, the plaintiff was having ample space for business for his brother Mahesh Kumar, there was no need to sale out the earlier shops which are adjacent to the present suit shop and all are established in the same house No.62. Therefore, the eviction suit is filed only to sale out the suit shop also, hence, the provisions of Section 12(1(f) of the Act shall not be applicable in the present case.

10. It is further submitted that DW-1 Mohsin Ali and DW-2 Vahid have admitted that the suit shop is having additional space and Mahesh Kumar is also indulge in the business by parting the shop of the plaintiff, therefore, it is clear that the shop in possession of the plaintiff is having ample space. Hence, the learned Courts below have committed grave error of law and facts in deciding that the suit of the plaintiff solely on the basis of bona fide requirement in their favour, therefore, the findings are absolutely adverse. Learned Senior counsel for the appellant has further submitted that the plaintiff himself has admitted that he wanted to vacate the shop for expanding his own shop, which is changed version of the appellant. It is submitted that after the partition between the family members of the plaintiff, the plaintiff has filed the suit for eviction only to sell the suit shop. If there



has been some bona fide requirement, five shops were not required to be sold out and the same may be used for the bona fide requirement of business for Mahesh Kumar. In support of this Contention, learned Senior counsel has placed reliance over the judgment of Hon'ble Apex Court in the case of [Deena Nath vs. Pooran Lal reported in 2001 (5) SCC 705 prara no.15].

- 11. Learned Senior counsel for the appellant has further submitted that for any business of family members, if the plaintiff is having no alternate places, then their requirement must be bonafide, but in the present case, since the plaintiff is having the spaces and the same were sold out by the plaintiff during the course of pendency the suit either before the trial court or before the appellate court, the bonafide requirement of the plaintiff cannot be treated as whimsical desire. In support of this contention, learned Senior counsel for the appellant has placed reliance over para no.9 of the judgment of Hon'ble Apex Court in the case of Siddalingamma and Another vs. Mamtha Shenoy reported in (2001) 8 SCC 561. At the fag end of arguments, learned Senior counsel has concluded that the requirement of the plaintiff is fake and the learned trial Court as well as learned first appellate Court have committed grave error of law and facts in passing the judgment and decree under Section 12(1)(f) of the Act. The findings of learned Courts below are perverse, improper and unjustified. Hence, prays for setting aside the impugned judgment and decree.]
- 12. Per contra, learned counsel for the respondent/plaintiff has supported the impugned judgments and decree passed by learned Courts below. Ha has submitted that the learned trial Court as well as learned first



appellate Court were justified in decreeing the suit in favour of the plaintiff by considering bonafide requirement of the plaintiff and rightly directed the appellant to evict the suit shop. Counsel for the plaintiff/respondent submits that admittedly, father of the appellant was tenant since 29.03.1966 and the firm Vardichand-Ramnarayan was terminated on 13.12.1991. Since, the firm which has given the tenancy to the appellant is terminated, admittedly, the appellant has paid the rent to the plaintiff. Counsel for the respondent/plaintiff has fairly admitted that out of total six shops situated in House No.62, three shops were sold by the plaintiff during the pendency of the suit before the trial court and two were sold out during pendency of this appeal.

13. Counsel for the plaintiff has submitted that since the plaintiff was under requirement of funds for his business, therefore, the small shops were sold out by the plaintiff. It is further submitted by counsel for the plaintiff that since, the learned trial Court as well as the learned first appellate Court has passed the judgment and decree in favour of the appellant under Section 12 (1)(f) of the act, it cannot be said that the plaintiff is having any alternate place for business of family members. In support of his contention, counsel for the respondent ha placed reliance over the judgment of this Court passed in the case of Sujata Sarkar vs. Anil Kumar Duttani [2009 (2) MPLJ 156] wherein the Court has held that the absence of pleadings in the plaint in respect of availability of alternate suitable accommodation is not fatal to the plaintiff's case when there is adequate and sufficient oral evidence on record to the effect that the plaintiff does not possess any other suitable



accommodation in the city. Therefore, the learned Courts below have rightly decided the plaint/suit of the plaintiff and passed the judgment and decree in accordance with law after proper appreciation of the record. Therefore, prays for dismissal of the second appeal.

- 12. I have heard the counsel for the parties and perused the record.
- 13. In view of the aforesaid submissions and pleadings of both parties, this Court has admitted this second appeal on following substantial question of law:-

"Whether the judgment and decree granted by lower appellate Court directing eviction under Section 12(1)(f) of the M.P. Accommodation Control Act is sustainable in view of the pleadings and evidence brought on record or not?

14. Prior to examine the case, the application under Order 41 Rule 27 of CPC filed by the appellant is required to be pondered. In this context, the contents of the application under Order 41 Rule 27 of CPC, are to be considered within purview of the concerning provision, therefore, it appears essential to reproduce the respective provision of Order 41 Rule 27 of CPC, as hereinbelow:-

# "R.27. Production of additional evidence in Appellate Court:-

admit evidence which ought to have been admitted, or

(1) the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. But if - (a) the Court from whose decree the appeal is preferred has refused to



- [(aa) the party seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]
- (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

- (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."
- 15. At this juncture, the law laid down by the Hon'ble Supreme Court in Surjit Singh & Ors. vs. Gurvant Kaur and Ors. 2014 LawSuit (SC) 710, while considering the jurisdiction under Sub-Rule (1)(b) of Order 41 Rule 27 of CPC, is worth to refer here-
  - "[21].....However exercise of the said power is circumscribed by the limitations specified in the language of the rule. It is the duty of the Court to come to a definite conclusion that it is really necessary to accept the documents as additional evidence to enable it to pronounce the judgment.."
  - [22]....We are conscious, the spectrum that can be covered under Order XLI Rule 27 (1)(b) may be in a broader one but in certain cases



judicial propriety would be an impediment and the present case is one where the judicial propriety comes on the way..."

- 16. In this respect, the law laid down by the this Court rendered in Ashok & Ors. Vs. Bharat Housing Co-operative Society & Ors. 2017 Law Suit (M.P.) 1332, is also relevant to quote here:-
  - "13. This Court in the matter of Reg. Vidhichand Dharamshala Trust, Gwalior vs. Shyam Singh and Ors. 2010 3 MPLJ 428 considering the scope of Order 41 rule 27 of CPC has held that the defendant was well aware of the document since long and no reason were assigned for not producing the certified copy at earlier stage and the proposed document was withing the knowledge of the defendant and no explanation was given as to why certify copy of the same was not procured at trial stage and it was not a choice of a litigant to obtain certified copy at any stage despite having its knowledge from the beginning and to seek leave for being taken on record at appellate stage, hence, there was no propriety in admitting such document as additional evidence."
- document/map related to prove about the establishment of the shops in the said house and the same is in possession of the appellant from initial stage, the explanation showing for belated filing, is not found satisfactory. That apart, this document is also not helpful in pronouncement of the judgment. This document has not only been produced at the fag end of trial but at the second appellate Court stage while this Court sitting for deciding the appeal. Hence, the said map is not required to be taken on record at this stage even in the case of eviction, there is no

important role of the map in deciding this second appeal and the court has to deal with the question of *bona fide* requirement of the plaintiff only. Therefore, the application I.A. No.9662 is hereby dismissed.

- 18. It is an admitted fact that out of six shops, five have already been sold out by the plaintiff/respondent. However, it is also admitted that the said shops were sold by the plaintiff for expanding their business. The learned senior counsel for the appellant has stressed on the point that absence of pleadings with regard to non-availability of alternate suitable accommodation, in the suit, is fatal to the plaintiff's case. But, since the plaintiff have sold their shops during pendency of the suit, it cannot be assumed that the plaintiffs have bonafide requirement of the suit shops.
- 19. In the case of Ram Narain Arora vs. Asha Rani and Others 1999
  (1) SCC 141, the Hon'ble Apex Court, while dealing with the similar issue has specifically held that even if in the absence of pleadings, the Court can examine the evidence on record to determine the issue as to whether the landlord is in possession of some alternate accommodation or not and mere absence of pleadings would not be fatal and Courts cannot take up a pendantic or dogmatic approach in the matter. Para nos.10 and 11 of the are important to quote here as under:-
  - 10. In making a claim that the suit premises is required bona fide for his own occupation as a residence for himself and other members of his family dependent on him and that he has no other reasonably suitable



accommodation is a requirement of law before the Court can state whether the landlord requires the premises bona fide for his use and occupation. In doing so, the Court must also find out whether the landlord or such other person for whose benefit the premises is required has no other reasonably suitable residential accommodation. It cannot be said that the requirement of the landlord is not intermixed with the question of finding out whether he has any other reasonably suitable accommodation. If he has other reasonably suitable accommodation, then necessarily it would mean that he does not require the suit premises and his requirement may not be bona fide. In circumstances further inquiry would be whether that premises is more suitable than the suit premises. Therefore, the questions raised before the Court would not necessarily depend upon only the pleadings. It could be a good defence that the landlord has other reasonably suitable residential accommodation and thereby defend the claim of the landlord.

11. There cannot be a pedantic or a dogmatic approach in the matter of analysis of pleadings or of the evidence adduced thereto. It is no doubt true that if the pleadings are clearly set out, it would be easy for the



Court to decide the matters. But if the pleadings are lacking or vague and if both parties have understood what was the case pleaded and put forth with reference to requirement of law and placed such material before the court, neither party is prejudiced. If we analyses from this angle, we do not think that the High Court was not justified in interfering with the order made by the Rent Controller."

- 20. Following the aforesaid law laid down by Hon'ble the Apex Court in the case of **Sujata Sarkar** (supra), this Court has held that mere absence of pleadings in the suit with regard to non-availability of suitable alternate accommodation in the city is not fatal to the plaintiff and the suit of the landlord cannot be thrown out.
- 21. Again, this Court has similarly followed the aforesaid law in the case of Dheeraj Rohra vs. Shyam Bihar pandey 2023 (2) MPLJ 104. The relevant excerpt is reproduced here as under:-
  - "15. Undisputedly, the plaintiff has more shops in the same building and it is his case that after demolishing the shop, he wants to reconstruct a shop for the non-residential purposes for his sons and nephew. The plaintiff cannot be compelled to squeeze himself in a small premises specifically when the said small premises is not sufficient for the appellant himself to



run his business in a decent manner. Thus, even if one shop had fallen vacant during the pendency of the suit, still the appellant has failed to prove that the said alternative accommodation is suitable for meeting out the requirement of the sons of the appellant for non-residential purposes."

- 22. The provision under Section 12(1)(f) of the Act is very clear that the plaintiff does not possess any other suitable accommodation in the city. Rameshchandra (PW-1) in his cross-examination has admitted that 4-5 years ago, he has made a partition in the shop of Vardichand-Ramnarayan and he has given the portion of north side to Mahesh and in South side, he himself is indulge in the business. It has also been admitted by the witness that the width of the suit shop in only 6-7 feets and if one is entered deeply, the same is remained only 4 feet at the end of shop, meaning thereby, the initial part of the shop is wide and last portion of the shop is narrow. The witness has also denied that there is any godown behind the said suit shop. It is also denied by PW-1 that they have any other shop in the city. PW-1 has admitted that the shops which were sold to the tenants, were sold due to needs of funds to initiate the business for Mahesh Kuamar. He has also admitted in his statements after the vacant possession of the shop, they will remove partition and shall carry their business in a routine manner.
- 23. Further, Mahesh (PW-2) has also admitted and supported the statements of the witness Rameshchandra (PW-1). Kailash (PW-3) has stated in his statements that since the shop of the plaintiff is very small, they have



used to keep the goods of the shop in the house. With regard to the question of bona fide requirement, the statements of Kailash (PW-3) are very significant and this witness has specifically stated that the suit shop is very small and the plaintiff is in requirement.

- 24. Keshrimal (DW-1), has fairly admitted in his cross-examination that in the shop of Vardichand-Ramnarayan, partition was made and the part of the shop was provided to Mahesh for business purpose. Apart that Saleem (DW-2) has stated that he has no knowledge about the fact that the plaintiff has sold the shops adjacent to the suit shop in need of amount to initiate the business for Mahesh, however, he has admitted that the shop of Vardichand-Ramnarayan was earlier occupied by Rameshchandra and by partition, one part was provided to Mahesh for his business. This witness has also admitted that he has no knowledge about any other shop or house of the plaintiff in the city.
- 25. In view of the aforesaid statements of the witnesses and admission of Keshrimal (DW-1), the learned trial Court has found that the shops were sold to the tenants only by the plaintiff due to bona fide requirement of amount to initiate the business of his brother Mahesh Kumar. Thereafter, sale of the said shops, partition was made and business was started by both of them in the small shop.
- 26. So far as the payment of rent of the shop from 01.02.1995 to 31.03.1995 is concerned, the plaintiff has denied that he has never received the rent for two months, but the appellant has stated that he has paid the said



rent. Keshrimal (DW-1) has admitted in statements that he has not paid the amount of rent of these two months to the plaintiff but, sent the same amount to him through money order, but in this regard no receipt of money order has been placed on record by Keshrimal (DW-1). Therefore, it cannot be said that he has duly paid the remaining rent. However, later on, he has stated that the rent amount of those months were deposited in the Court. Hence, the learned trial Court as well as the learned appellate Court were justified in deciding this question also.

27. On this aspect, the effect of subsequent events on bonfide need is required to be considered by the Courts of law at the time of deciding the eviction suits filed by the landlord. However, if every subsequent development during the post-petition period is to be taken into account for judging the bona fides of the requirements pleaded by the landlord, there would perhaps be no end so long as the unfortunate situation in our litigative process system subsists. After facing a long financial crisis, if the landlord moved for eviction on the ground that he needed the premises for joining new assignment or starting new work for the family since neither the landlord nor his family members are expected to sit idle without doing any work, lest, joining new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the premises for business or startup. If a young entrepreneur decides to launch a new enterprises and on that ground, he or his family members seeks eviction of the tenant from the premises, the said proposed enterprise would not get faded out by subsequent developments. Therefore, the sale of three shops to the tenants themselves,



cannot said to be malafide and shall only be a bona fide requirement for starting of the business of family member.

- 28. Apart that, choice of the landlord is an everlasting right during his lifetime. The choice of the landlord cannot be discarded by law. If the need of the landlord for additional accommodation is proved and the predilection shown by him is not perverse or abnormal, his choice is to be respected. The Court cannot replace its own opinion for that of the landlord in regard to his requirements. What the Court has to see is that the landlord is not actuated by an ulterior motive. The Court is not the rationing authority for house accommodation under the Act,
- 29. On this aspect, para no.13 of the landmark judgment of Hon'ble Apex Court rendered in the case of Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta [(1999) 6 SCC 2022], is condign to quote here as under:-
  - 13. ....Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited .for the purpose; the court would not in such a case thrust its own wisdom upon the choice Of the landlord by holding that not one. but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or two conservative or pedantic must be guarded against."



- 30. Even the last argument, raised on behalf of the appellant to the effect that the premises in question is very small premises and it is not likely with the respondent/landlord and his brother although can start his business in that premises, also appears to be worthless. It is also contended by learned Senior counsel that since the respondent and his brother have separated their part, this suit filed by the brother should not be entertained for bonafide requirement of Mahesh Kumar. On this aspect, it is replied by counsel for the respondent that this portion of the property has been given to Mahesh Kumar in partition.
- 31. So far as the contention regarding maintainability of the suit is concerned, at the stage of second appeal, it cannot be entertained. Such arguments was required to be raised before the trial Court itself. Certainly, if the suit is filed by some as to today in such case, the same would be filed only by the person for whom the bonafide requirement is exist. Since, respondent was owner of the suit shop at the time of filing the suit, he can not be non-suited only on the basis that after partition the suit shop was given to his brother Mahesh. Moreover, it is pertinent to mention here that this suit was filed by Ramesh Chandra for the bonafide requirement of Mahesh himself. Hence, point of maintainability of the suit at this stage is not sustainable in the eyes of law.
- 32. In view of the aforesaid elaborate discussions as well as looking to the law settled on the point, the plaintiff has duly proved the bona fide requirement of business before the learned trial Court. Therefore, the learned



trial Court as well as the learned appellate Court were justified in granting the decree in favour of the plaintiff under Section 12(1)(f) of the Act of 1961. Accordingly, the findings of learned Courts below do not warrant any interference by this Court and the same deserve to be upheld. The substantial question framed by this Court is answered in negative against of the appellant. Resultantly, the appeal fails and is accordingly dismissed and the findings of both the courts below are hereby affirmed.

33. Pending application, if any, stands closed.

(PREM NARAYAN SINGH) JUDGE

AMIT