

**HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**F.A No. 752/2013**

Manoj Notwani

Vs.

Smt. Varsha Chandani

**[Single Bench : Hon'ble Smt. Justice Anjali Palo]**

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Shri Ravish Agrawal, Senior Advocate with Ms. Sanjana Sahni, Advocate  
for the appellant.

Shri Sanjay Agrawal, Advocate for the respondent.  
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**JUDGMENT**  
**(24/02/2020)**

This appeal under Section 96 of the Code of Civil Procedure has been preferred by the appellant/defendant being aggrieved by the judgment and decree dated 21.09.2013 passed by the VI Additional District Judge, Satna in Civil Suit No. 46-A/2013.

2. It is not in dispute that appellant/defendant is the tenant of respondent/plaintiff of shop Nos. 1 and 3 situated at Manish Market, Satna, at the rate of Rs. 3,121/- per month for commercial purpose. Respondent/plaintiff filed a suit against the appellant/defendant stating that earlier, she (respondent) was residing with her husband at Ahmedabad. Since April-May, 2009 the respondent along with her husband is residing at Satna. The respondent/plaintiff contended that she has bonafide need of the suit shops for her own business, therefore, she claimed vacant possession of the suit shops and arrears of rent which were not paid by the appellant since September, 2009. Respondent/plaintiff also

claimed that the appellant/defendant had illegally constructed a wall and changed the original structure of the suit shops. Thus, she filed a suit for eviction of the suit property and arrears of rent.

3. Appellant/defendant, in his written statement, denied the contentions of the respondent/plaintiff. He further claimed that the shops were joined internally by constructing a wall with the consent of Haridas Chandani-previous owner of the suit shops. Appellant/defendant also pleaded that after receiving notice from the respondent, he paid Rs. 65,000/- towards arrears of rent to Haridas Chandani. He further pleaded that respondent/plaintiff filed a suit on false ground which deserves to be dismissed.

4. In the impugned judgment, learned trial Court came to the conclusion that the respondent/plaintiff is the landlord of the suit shops. The appellant/defendant is the tenant of the aforesaid suit shops since year 2002 for commercial purpose and the respondent/defendant required the suit shops for starting her business. Her need is bonafide. She has no alternative suitable shops for starting her business. Hence, the trial Court allowed the suit and passed a decree against the appellant under Order 12 Rule 1(e) of the MP Accommodation Control Act to vacate the suit shops within two months from the date of judgment i.e. 21.09.2013.

5. The appellant/defendant has challenged the aforesaid findings on the grounds that the trial Court has erred in holding that the respondent/plaintiff has proved that she is in bonafide need of the suit shops for her business, in fact, the respondent/plaintiff had failed to prove that she is not having any alternative suitable shop in the town for carrying out her business. The appellant/defendant has further stated that the

respondent/plaintiff is a house-wife and she has no knowledge of the case. Neither the respondent/plaintiff nor her husband has stated that for what business they want the shops, hence their need is not bonafide. Further, the respondent/plaintiff has various alternative accommodation but the same were not used by them. She purchased 27 shops out of which some shops have been let out while two shops have been sold and shop Nos. 26 and 28 are still lying vacant. On the aforesaid reasons, the appellant/defendant has prayed to set aside the impugned judgment and decree.

6. Heard learned counsel for the parties. Perused the record.

7. Respondent/plaintiff herself stated that she is unemployed. She has bonafide need of the suit premises to start her business. She further deposed that she has no alternate suitable space in Satna city. It is pertinent to note that this statement is still unchallenged. Appellant/defendant has not stated anything on this point. Learned counsel for the appellant/defendant contended that, learned Court below wrongly held that the burden to prove that respondent/plaintiff has alternative accommodation was on the tenant/appellant, in fact the burden lies on the landlord. This fact has properly been dealt with by the Court below in paragraph 21 and 26 of the impugned judgment. The Court cannot disbelieve the statement of the landlord/respondent without any cogent reason.

8. Learned counsel for the respondent/plaintiff has placed reliance on the cases of **Namamlal vs. Prakash Chand Jain (2009) 1 MPLJ 313**, **Ragavendra Kumar vs. Firm Prem Machinery (2000) 1 SCC 679**, **Yadavendra Arya vs. Mukesh Kumar Gupta (2008) 2 SCC**

**144 and Ms/ Baghel Prasad Dharam Chand Jewellers vs. Chandra Prakash Vaidya 2002(4) MPHT 18 (CG).** In case of **Ragavendra Kumar (supra)**, the Hon'ble Supreme Court has held as under :

“The learned Single Judge of the High Court while formulating first substantial question of law proceeded on the basis that the plaintiff landlord admitted that there were number of plots, shops and houses in his possession. We have been taken through the judgments of the courts below and we do not find any such admission. It is true that the plaintiff-landlord in his evidence stated that there were number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that suit premises is suitable for his business purpose. It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter, (See: **Prativa Devi (Smt.) v. T.K Krishnan, [1996] 5 SCC 353**). In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.”

9. The appellant/defendant denied the relation as tenant of the respondent/plaintiff with this regard. It is important to note that in written statement, he has admitted that he paid regular rent upto September 2009 to *muneem* (clerk) of previous owner namely Haridas. Thereafter, since October 2009 upto January 2010, he sent a cheque for four months of arrears of rent to the respondent/plaintiff which has been received by the respondent/plaintiff herself. Respondent/plaintiff also admitted these facts in her affidavit under Order 18 Rule 4 of CPC. She has specifically stated that in the year 2002, she purchased the suit shops from Haridas. Impliedly, the appellant/defendant admitted her his landlord and pay rent to her. Appellant/defendant, in paragraph 11 of his cross-examination deposed that one Vijay Gupta-*muneem* (clerk) of the respondent/defendant received rent from him and issued receipt in his name. He himself produced a demand draft (Ex.D/1) to show that after receiving notice from the respondent/plaintiff, he sent a demand draft of the arrears of rent to the

respondent/plaintiff. Thus, it is duly established that the appellant/defendant is the tenant of the respondent/plaintiff.

10. In the present case, despite the fact that there were number of alternate shops and houses belonging to the respondent/landlord, but he made a categorical statement that the said houses and shops were not vacant or suitable as the suit shop for carrying out her business. It is also a settled position of law that the landlord is the best judge of the need for residential or business purpose- and he has got complete freedom in the matter. In case of **Rishi Kumar Govil vs. Maqsoodan & Ors., (2007) 4 SCC 465**, the Hon'ble Supreme Court has observed as under :

“19. In **Ragavendra Kumar v. Firm Prem Machinery and Co., AIR (2000) SC 534** it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In **Gaya Prasad v. Pradeep Shrivastava, AIR (2001) SC 803** it was held that the need of the landlord is to be seen on the date of application for release. In **Prativa Devi (Smt.) v. T.V. Krishnan, [1996] 5 SCC 353** it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live.”

11. In case of **Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222**, the Hon'ble Supreme Court has held as under :

“Chambers 20th Century Dictionary defines bonafide to mean 'in good faith : genuine'. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whit ley define bonafide to mean 'good faith, without fraud or deceit'. Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for

himself or for any member of the family would entitle him to seek ejection of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the 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 bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. 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 too conservative or pedantic must be guarded against.

The availability of an alternate accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to bonafides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the Court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of nonavailability of any other reasonably suitable residential accommodation to the landlord, would not be

satisfied. Wherever another residential accommodation is shown to exist as available than the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.

A few decided cases apposite to the point may be referred. A **Division Bench of Madhya Bharat High Court in Motilal Vs. Badrilal - ILR 1954 MB 1**. interpreted clause

(g) of the Madhya Bharat Sthan Niyantaran Vidhan Samvat, 2006 where-under a landlord was entitled to eject a tenant if he "really needs a house for himself and he possesses no other accommodation belonging to him elsewhere". It was held that the landlord was made the sole arbiter of his own requirements but he must prove that he in fact wants and genuinely intended to occupy-the premises. His claim would no doubt fail if the Court came to the conclusion that the evidence of "want" was unreliable and that the landlord did not genuinely intend to occupy the premises. As to alternative accommodation disentitling the landlord to the relief of possession it was held that it must be reasonably equivalent as regards suitability in respect to the accommodation he was claiming. This statement of law was cited with approval before a Full Bench of the High Court of Madhya Pradesh in **Damodar Sharma & Anr. Vs. Nandram Deviram - AIR 1960 MP 345**. Pandey,J. recording the majority opinion emphasised the distinction between the expressions 'genuinely requires' and 'reasonably requires'and said:-

"It is wrong to say that "genuinely requires" is the same as "reasonably requires". There is a distinction between the two phrases. The former phrase refers to a state of mind; the latter to an objective standard. "Genuine requirement" would vary according to the idiosyncrasy of the individual and the time and circumstances in which he lives and thinks. Reasonable requirement belongs to the "knowledge of the law" and means reasonable not in the mind of

the person requiring the accommodation but reasonable according to the actual facts. In my opinion, in this part of Sec.4(g), the landlord is made the sole arbiter of his own requirements but he must prove that he, in fact, wants and genuinely intends to occupy the premises. His claim would no doubt fail if the Court came to the conclusion that the evidence of "want" was unreliable and that the landlord did not genuinely intend to occupy the premises".

12. The respondent/plaintiff deposed that she had bonafidely purchased a suit shops to start her a business. She has no alternative and suitable shop for her business. Suit shops are suitable for her because both are situated in area which has a commercial values. Thus, it cannot be said that she has not stated about any alternative accommodation. Her husband Deepak Chandani also corroborated her testimony. With this regard, he denied that he had other accommodation to start a new business for her wife. Even though, he has admitted that there is a vacant shop is situated in North side in their possession but in the light of principle laid down in the cases of **Rishi Kumar (supra)**, **Shiv Sarup Gupta, Motilal (supra)** and **Damodar Sharma (supra)**, in the considered opinion of this Court, the respondent/plaintiff is the best judge to choose better and suitable option for her business. Respondent/plaintiff has no suitable alternative space. For this, respondent/plaintiff duly discharged her burden lies on the appellant/respondent to establish that other alternative spaces are suitable for respondent in view of commercial importance etc. Appellant/defendant has failed to establish that the other vacant shops were equally suitable or have great commercial importance with the suit shops. No witness has been examined by the appellant/defendant to corroborate the testimony of the appellant/defendant. There is no reason to disbelieve the testimony of the respondent/plaintiff and her husband with regard to the bonafide need of the respondent/plaintiff for the suit shops.



**13.** This Court finds that the learned trial Court duly considered all the above aspects and duly appreciated the entire evidence available on record in its right perspective thereafter, passed a decree in the suit for eviction in favour of the respondent/plaintiff. There is no merit in this to interfere with the impugned judgment and decree, hence, the appeal is **dismissed.**

**(Smt. Anjali Palo)**  
**Judge**

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