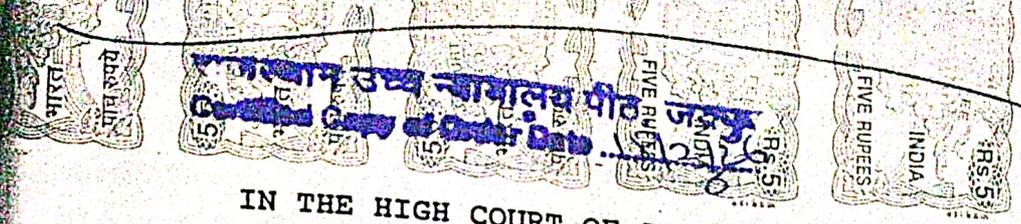




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पत्र सं. 6789 में काम आया
दिनांक 20/2/26
(10/2/26)
प्रसारणिक अधिकारी न्यायिक
प्रतिलिपि विभाग
राजस्थान उच्च न्यायालय, जयपुर



31/07/19

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH JAIPUR

S.B. CIVIL WRIT PETITION NO. 18448 /2019

Rasheed Mohammed Qureshi S/o Late Shri Shafi
Mohammed, aged about 42 years, by caste
Musalman, R/o House No. 563, Near Nadro Ki
Masjid, Chini Ki Burj, Chowkdi Sarhad, Jaipur.

--PETITIONER/PLAINTIFF

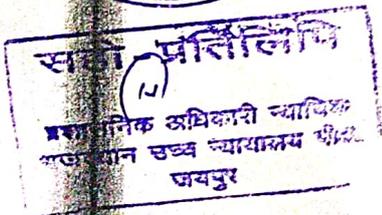
VERSUS

1. Anil Dhamela S/o Late Shri Hukumchand Dhamela,
aged about 48 years,
2. Ajay Dhamela S/o Late Shri Hukumchand Dhamela,
aged about 46 years,

Both R/o Shop No. 307, Indra Bazar, Jaipur and
Residential Address 684, Frontier Colony,
Adarsh Nagar, Jaipur.

RESPONDENTS-DEFENDANT

S.B. CIVIL WRIT PETITION UNDER ARTICLE
227 OF CONSTITUTION OF INDIA TO SET
ASIDE THE JUDGMENT AND ORDER DATED



Handwritten signature

J. K. YOGI

DATE: 31/07/19
REG. NO. 18448/2019

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23.07.2019 PASSED BY THE COURT OF SHRI
BAL KRISHNA MISHR, R.J.S. (D.J. CADRE),
LEARNED RENT APPELLATE TRIBUNAL, JAIPUR
IN THE APPEAL NO. 113/2017 TITLED AS
'ANIL DHAMELA & ANR. V/S RASHEED
MOHAMMED QURESHI'

To



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प्रशासनिक अधिकारी न्यायिक
एजेंसिज एंड सर्विस प्रोवाइडर्स पीएच.
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tenants, consequently, quashed and set aside the order dated 03.06.2017, passed by the learned Rent Tribunal, Jaipur (Additional Senior Civil Judge and Additional Chief Metropolitan Magistrate No. 1, Jaipur Metropolitan, Jaipur), in Application No.369/2014, wherein the learned Rent Tribunal had allowed the eviction application filed by the petitioner-landlord under Section 9 of the Rajasthan Rent Control Act, 2001 (hereinafter referred to as "the Act of 2001").

2. The brief facts, as pleaded, are that the petitioner-landlord instituted an application under Section 9 of the Act of 2001, inter alia contending that the shop in dispute had been let out to the respondents-tenants by the petitioner's father on 12.09.1997 at a monthly rent of Rs. 600/- excluding electricity charges. It was averred that Shafi Mohammed and his wife, Smt. Shakko Begam, had expired some time ago. Upon their demise, when the petitioner demanded payment of rent from the respondents, the same was refused. Consequently, a legal notice dated 20.03.2014 was issued to the respondents intimating the petitioner's bank account details and calling upon them to deposit the arrears of rent amounting to Rs. 34,800/-. Pursuant to the said notice, the respondents deposited the rent amount.

3. The petitioner-landlord further submitted that he has been carrying on the business of a Photo Colour Lab since 05.11.2001 from a rented premises situated at Raisar Plaza. He also stated that with effect from 07.05.2013, he had taken another shop on rent from one Inder Singh Verma, bearing Shop No. 1668, Baba Harish Chandra Marg, Jaipur, wherein he conducts the business of



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album making. It was specifically pleaded that both the aforesaid premises are tenanted accommodations and are not owned by the petitioner-landlord.

4. It was further contended that the initial rent of the Raisar Plaza shop was Rs. 9,000/- per month, which has subsequently been enhanced to Rs. 19,215/- per month, rendering it financially burdensome and beyond the petitioner's capacity to sustain. Being the owner of the shop in dispute and asserting his bona fide requirement thereof, the petitioner-landlord sought eviction of the respondents-tenants to enable him to conduct his Photo Colour Lab business from the disputed premises.

5. The petitioner additionally contended that the disputed shop is situated in the main market area of Inder Bazaar, Jaipur, where several Photo Colour Labs are already operational. It was asserted that conducting his business from his own premises at such a prime commercial location would substantially enhance his prospects of earning a better income.

6. Upon service of notice, the respondents-tenants entered appearance and filed their reply, wherein they categorically denied the averments made in the eviction petition. It was contended that the petitioner-landlord had voluntarily taken the premises at Raisar Plaza on rent for operating his Photo Colour Lab, as the said premises is situated at a superior commercial location, is more spacious in size, and is better suited for effectively conducting such business activities.

7. The respondents-tenants further submitted that the shop in dispute, measuring approximately 8.5 feet x 14 feet, is too small



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and unsuitable for running a Photo Colour Lab. It was also contended that at or around the same time when the disputed shop had been let out, the petitioner-landlord had taken shop on rent for carrying on his business, which belies the claim of bona fide necessity. Additionally, it was averred that the shops in the vicinity of the disputed premises are predominantly engaged in the sale of electrical goods, and therefore, the locality is not conducive for operating a Photo Colour Lab. The respondents-tenants further contended that for several years the petitioner-landlord had been exerting pressure upon them to enhance the rent and that the present eviction petition has been instituted merely with the oblique motive of securing an exorbitant increase in rent.

8. The learned Rent Tribunal, after affording opportunity of hearing to both parties and upon due appreciation of the evidence available on record, allowed the eviction petition filed by the petitioner-landlord vide order dated 03.06.2017 and accordingly issued the eviction certificate.

9. Aggrieved by the said order, the respondents-tenants preferred an appeal before the learned Appellate Tribunal. The learned Appellate Tribunal, vide order dated 23.07.2019 allowed the appeal and set aside the order dated 03.06.2017 passed by the learned Rent Tribunal.

10. Learned counsel appearing on behalf of the petitioner-landlord contended that the learned Appellate Tribunal had no cogent or justifiable basis to interfere with and reverse the well-reasoned findings recorded by the learned Rent Tribunal.



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10.1 It was submitted that the Appellate Tribunal committed a manifest error of law in disbelieving the *bonafide* requirement of the petitioner-landlord merely on the ground that he could not satisfactorily establish that the premises presently occupied by him for carrying on business had initially been taken on rent at Rs. 9,000/- per month and that the rent thereof was subsequently enhanced to Rs. 19,215/- per month.

10.2. It was further contended that solely on the aforesaid reasoning, the learned Appellate Tribunal proceeded to hold that the *bonafide* requirement of the petitioner-landlord was superficial and not genuine. Such a finding is perverse, contrary to the material available on record, and unsustainable in the eyes of law.

10.3. Learned counsel for the petitioner-landlord submitted that it is an undisputed and admitted position that the petitioner-landlord is presently carrying on his business from rented premises despite being the owner of the shop in dispute. Once this factual position stands established, the *bonafide* necessity of the petitioner-landlord is made out, as a landlord cannot be compelled to continue his business in a tenanted premises when his own property is available for occupation and use.

10.4. It was further urged that the tenant cannot dictate to the landlord the manner or place in which he should conduct his business. The landlord is the best judge of his own requirements and suitability of premises. The respondents-tenants neither pleaded nor proved that the petitioner-landlord owns any other commercial premises apart from the disputed shop. In the absence of any alternative accommodation owned by the



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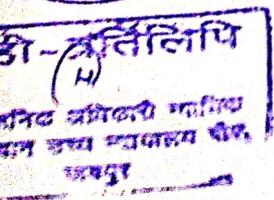
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petitioner-landlord is presently carrying on his business was not a tenanted premises but was, in fact, owned by him. Upon due appreciation of the oral as well as documentary evidence adduced by the parties, the learned Rent Tribunal returned a clear and unequivocal finding that the respondents-tenants had failed to substantiate their plea that the said premises was owned by the petitioner-landlord and had found no other premises available with the landlord except the premises which were on rent.

14. This Court also finds that the learned Rent Tribunal considered and rejected the contention of the respondents-tenants that the petitioner-landlord could conveniently and effectively carry on his business from the premises situated at Raisar Plaza which was a rented premises.

15. Further, this Court finds that the learned Rent Tribunal categorically recorded a finding that the petitioner-landlord was paying rent at the rate of Rs. 19,215/- per month, an assertion which remained unrebutted by the respondents-tenants. The learned Rent Tribunal further held that the plea of the respondents-tenants to the effect that the petitioner was in possession of several other premises was wholly unsubstantiated, as they failed to prove the existence or availability of any alternative premises owned by the petitioner-landlord.

15. This Court also finds that additionally, the learned Rent Tribunal relied upon the statement of D.W.-1, who admitted that it was for the petitioner alone to decide where his Photo Colour Lab business could be carried on more profitably. This admission reinforced the settled legal position that the landlord is the best



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judge of his own business requirements. Upon consideration of the settled principles governing *bonafide* requirement, as laid down in various judicial pronouncements, the learned Rent Tribunal held the petitioner's need to be genuine and consequently allowed the eviction petition.

16. This Court finds that the learned Appellate Tribunal reversed the aforesaid well-reasoned findings primarily on the ground that the petitioner-landlord had failed to satisfactorily prove that he was paying rent at the rate of Rs. 19,215/- per month for the tenanted premises from which he was carrying on his business.

17. The learned Appellate Rent Tribunal further observed that the petitioner-landlord had not established his specific plea that he was unable to bear the said rent and was, therefore, compelled to institute the eviction proceedings. On this reasoning alone, the finding recorded by the learned Rent Tribunal on Issue No. 1 with regard to *bonafide* necessity was reversed.

18. This Court finds that the learned Appellate Rent Tribunal committed perversity, illegality, and misreading of the evidence. It was never the case of the petitioner-landlord that the eviction petition had been filed solely under compelling financial circumstances. Rather, it had been categorically pleaded that in order to expand his business, to augment his income, and to operate from his own premises, the disputed shop was required by him. By misconstruing the pleadings of the parties, the learned Appellate Rent Tribunal reversed the findings merely on the ground that the petitioner had not conclusively proved the factum of payment of rent at the rate of Rs. 19,215/- per month.



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19. This Court further is of the opinion that in his affidavit, the petitioner-landlord had categorically deposed that he was paying rent at the rate of Rs. 19,215/- per month. The said testimony remained un rebutted. Moreover, the respondents-tenants did not file any application during the course of the proceedings to summon the relevant records pertaining to payment of rent. If the respondents intended to dispute the petitioner's assertion regarding payment of rent at the aforesaid rate, it was incumbent upon them to take appropriate steps to disprove the same.

20. Mere cross-examination, in the absence of any substantive effort to summon or discover relevant documentary evidence, is insufficient to dislodge a categorical and un rebutted statement on oath. Had the respondents-tenants genuinely sought to establish that the petitioner was not paying rent at the rate of Rs. 19,215/- per month, they ought to have summoned the relevant documents during the course of proceedings. Their failure to do so gives rise to an adverse inference that the production of such documents would not have supported their case. Consequently, the un rebutted evidence regarding payment of rent by the petitioner cannot be said to have remained unproved.

21. Further, this Court finds that even when the learned Appellate Tribunal has not reversed the finding of the learned Rent Tribunal to the effect that landlord is carrying out business in a rented premises inspite of his own premises and the finding that there is no other premises available with the landlord, reversal of finding by the learned Appellate Tribunal on *bonafide* need cannot be sustained.



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21.1 This Court finds that the learned Appellate Tribunal has completely misread the evidence and the pleading of the parties and a perverse finding was recorded by reversing the well reasoned finding of the learned Rent Tribunal.

22. This Court also finds that the landlord is the best judge of his need and the tenant cannot dictate the landlord from where to carry on business.

22.1 The Court is of the said opinion in view of the judgment passed by the Hon'ble Apex Court in the case of **Rajani Manohar Kuntha & Ors. vs. Parshuram Chunilal Kanojiya & Ors.**, arising out of Special Leave (c) No. 30407 of 2024, decided on 02.12.2025. The pertinent paragraph is set forth below:

"3. After hearing learned counsel for the parties at length, it appears that the High Court while reversing the findings concurrently recorded by two courts proving need of the plaintiff's daughter-in-law was bona fide went to the microscopic scrutiny of the pleadings and the evidence and reversed in revisional jurisdiction. In our view, such scrutiny in exercise of revisional jurisdiction is not permitted until the jurisdiction as exercised by the two courts concurrently is ex facie without authority which is not a case herein.

4. Now, reverting to the need for the suit premises as rightly discussed by the Trial Court and the First Appellate Court, it is apparent that the plaintiff sought commercial premises situated at the ground floor occupied by the defendant. The pleadings and evidence had been taken note, whereby need of the premises situated at the ground floor was found bona fide as a commercial premises. The other premises situated at second and third floor are residential. So far as one room situated at the ground floor, it was pleaded by the



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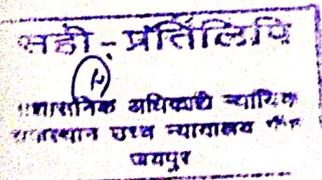
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plaintiff that it is residential though commercial connection has been taken after filing of the suit in 2016, however, this itself cannot be a ground to nullify the requirement in exercise of revisional jurisdiction. In addition, the defendant proposing alternative accommodation cannot dictate the plaintiff-landlord to accept the suitability of the accommodation and to nullify the need by having other premises which was allegedly said to be residential and for her use a commercial electric connection was taken during the pendency of present eviction proceedings."

22.2 Further, in the case of **Mohd. Ayub** (Supra), while discussing the need and interest of landlord observed and held as under:

"13. In our opinion, Ganga Devi applies on all fours to the present case. The first Appellant carries on his business from three small stalls of a shop of the Cantonment Council whose rent keeps on increasing. There is nothing on record to suggest that the Appellants' present business is more flourishing than the business which they propose to start in the leased premises. All the three sons of the Appellants are educated but unemployed. They want to start business in the premises in occupation of the Respondent. One of them is married and has three children. The other three are of a marriageable age. In all there are thirteen members in the Appellants' family and they are living in three rooms and one verandah with great difficulty. As against that the Respondent's family consists of four persons and there are four rooms in his possession. It is observed by the courts below that the Appellants own other premises. However, details of those premises are not on record. The High Court has rightly noted that this bald assertion is based on conjectures."



22.3 Further, in the case of **Bhimanagouda Basanagouda Patil** (Supra), the Hon'ble Apex Court while discussing the fact that reasonable time given to the tenant can mitigate the hardship of tenant observed and held as under:

"9. In this case, it is on record which is accepted by the courts below that the landlord is residing in Bijapur City, doing business and is staying with his family in a rented house. It is also the findings of both the courts below that he has purchased the property for his own use and occupation and is now seeking eviction on that ground. Courts below having found his claim for occupation being genuine, while considering the question of comparative hardship they ought to have taken note of the hardship the landlord would have suffered by not occupying his own premises as against the hardship the tenant would suffer by having to move out to another place. This was not done by the courts below. The learned District Judge considered only the affluence of the landlord without considering the hardship of having to continue in a rented house, while the High Court took a contradicting view in regard to the bonafide of the purchase of the house by the landlord. It also did not really compare the hardship of the two parties. Therefore, we have considered that aspect of the case and we are of the opinion assuming there will be some hardship to the tenant by having to vacate the premises, same can be mitigated by granting a reasonable time to vacate, bearing in mind the fact that the tenant has been residing in the suit house for considerably long period of time and this litigation itself has consumed nearly 12 years and the tenant has not taken any steps to find out any alternate accommodation."



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23. This Court also finds that the tenancy is from 1997, and when the landlord in spite of his own shop is doing business in rented premises, cannot be directed to continue the business in the rented shop. The landlord need is more enforced from the fact that he is doing business from the rented shop thus his need cannot be termed as superficial, but the same has to be treated as genuine /reasonable *bonafide* need.

24. In view of the aforesaid, this Court is of the considered opinion that the learned Appellate Tribunal committed perversity, illegality, and mis appreciated the evidence in reversing the findings recorded by the learned Rent Tribunal.

25. Consequently, the present writ petition is hereby **allowed** and the order dated 23.07.2019 is hereby quashed and set aside, and the order dated 03.06.2017 passed by the learned Rent Tribunal is upheld and restored.

26. However, in the interest of justice, the respondents-tenants are granted six months' time from today to vacate and hand over peaceful and vacant possession of the tenanted premises to the petitioner-landlord. In the event the respondents fail to vacate the premises within the aforesaid period, the petitioner shall be at liberty to execute the eviction certificate issued pursuant to the order dated 03.06.2017 in accordance with law.

27. Pending application(s), if any, also stand disposed of.



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 (BIPIN GUPTA, J)