

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 12896/2021

1. Shri Ramkrishna S/o Late Shri Purshottam Agarwal, Aged About 63 Years, R/o D-109, Jalvayu Vihar, Sector 10, Vidhyadhar Nagar, Jaipur. Presently Residing as a tenant at D-102, Jalvayu Vihar, Sector 10, Vidhyadhar Nagar, Jaipur.
2. Shri Rajeev S/o Late Shri Purshottam Agarwal, R/o Flat No. 3, Jalvayu Vihar, Sector 7, Vidhyadhar Nagar, Jaipur (Deceased) through Legal Representatives:
 - 2/1 Smt. Kiran Agarwal W/o Late Shri Rajeev Agarwal, age 63 Years, R/o Flat No. 3, Jalvayu Vihar, Sector 7, Vidhyadhar Nagar, Jaipur. Presently, R/o 7/204, Royal Greens 2, Sirsi Road, Jaipur.
 - 2/2. Smt. Pavitra Agarwal W/o Shri Mukut Goyal, D/o Late Shri Rajeev Agarwal, aged 35 Years, R/o Flat No. 3, Jalvayu Vihar, Sector 7, Vidhyadhar Nagar, Jaipur. Presently, R/o Flat No. 901, Block Coral, NRI Heights, Vinayshree, Azad Nagar, Khoyra Katari, NRI City Manawati Marg, Katarijiyora Nawab Ganj, Kanpur, Uttar Pradesh.

-----Petitioners

Versus

1. Vinay Agarwal S/o Late Shri Dinesh Agarwal, R/o Heda Gali, Nala Bazar, Ajmer.
2. Smt. Pushpa Agarwal W/o Late Shri Dinesh Agarwal, R/o Heda Gali, Nala Bazar, Ajmer.
3. Smt. Vinita Agarwal D/o Late Shri Dinesh Agarwal, W/o Shri Pradeep Goyal, R/o Heda Gali, Nala Bazar, Ajmer. Presently At Saligram Bhawan, Agrasen Nagar, Prabhat Talkies, Ajmer.
4. Smt. Alka Agarwal D/o Late Shri Dinesh Agarwal, W/o Shri Sanjay Singhal, R/o Heda Gali, Nala Bazar, Ajmer. Presently At S.S. Courier, Shop No. 3, Bangali Gali, Kuthcery Road, Ajmer.
5. Smt. Neetu Agarwal D/o Late Shri Dinesh Agarwal, W/o Shri Bhunesh Agarwal, R/o Heda Gali, Nala Bazar, Ajmer. Presently at Through Bhuneshji Agarwal, H.no. 1254/32, Dada Bhai Colony, Near Ajanta Talkies, Ajmer.
6. Smt. Monika Agarwal D/o Late Shri Dinesh Agarwal, W/o Shri Ravi Kumar Garg, R/o B-264, 10B Scheme, Gopalpura Bypass, Jaipur.
7. Smt. Arti Agarwal D/o Late Shri Dinesh Agarwal, W/o Shir Amit Gupta, R/o 93, 3, D Estate Ground Floor, Tiyaarpur, Delhi - 54.

-----Respondents

For Petitioner(s) : Mr. Rahul Agarwal
For Respondent(s) : Ms. Pranjal Mundhra for
Mr. Veyankatesh Garg

HON'BLE MR. JUSTICE MANEESH SHARMA
Order

07/05/2026

1. The present writ petition under Article 227 of the Constitution of India has been filed by the petitioner-landlord assailing the order dated 02.09.2021 passed by the learned Appellate Rent Tribunal, Ajmer, in Rent Appeal No. 70/2016, titled '*Vinay Agrawal & Ors. Vs. Ramkrishna & Ors.*', whereby the appeal preferred by the respondent-tenant was allowed and the judgment and decree dated 23.08.2016 passed by the learned Rent Tribunal, Ajmer, in Original Application No. 32/2011, titled '*Ramkrishna & Anr. Vs. Dinesh Agrawal*', was set aside.

2. Brief facts giving rise to the present writ petition are that the petitioner-landlord filed an eviction petition on 06.04.2011 against the respondent-tenant under Section 9 (a), (i), and (e) of the Rajasthan Rent Control Act, 2001, on the ground of default in payment of rent, *bona fide* necessity, and sub-letting while stating that the tenanted premises bearing No. 8/15, situated at Nala Bazar, Ajmer, comprising of a shop on the ground floor, residential accommodation on the first floor, and terrace thereupon, was let out to the predecessor-in-title of the tenant, namely *Shri Manohar Halwai*. It was further stated that the present rent of the tenanted premises is Rs. 800/- per month from February 1999. It was averred that the tenant has never been regular with payment of rent, has committed a default in payment of rent, and claimed arrears of rent amounting to Rs. 97,600/- for 122 months. It was

further averred that the petitioner is a permanent resident of Ajmer but has been living in Jaipur on rent and wants to move back from Jaipur to Ajmer and re-settle there, and further to establish his business in Ajmer itself; thus, he has a *bona fide* necessity of the tenanted premises. It was also averred that the tenant, on the occasion of the *Urs* festival as well as on various other occasions, has been illegally sub-letting the tenanted premises without prior permission from the petitioner. Accordingly, the petitioner prayed for an order of eviction against the tenants and other consequential decree.

3. Upon service of notice upon the tenant, the respondent-tenant filed a reply on 29.06.2011 and denied the averments made in the eviction petition, primarily stating that the petitioners are permanent residents of Jaipur, where they have been residing from the last 40 years in their owned property and are carrying on an established business in Jaipur too; thus, they do not have any *bona fide* necessity of the tenanted premises. It was further contended on behalf of the respondent that the agreed rent of the tenanted premises is Rs. 200/- per month, which had been increased from Rs. 70/- per month in the year 2000, and presently the payable rent is not Rs. 800/- per month as alleged in Para No. 4 of the petition. It was further submitted that the respondent-tenant has timely paid/deposited the entire rent amount in the bank account of the petitioner-landlord, and therefore, neither are any arrears of rent due, nor has the respondent committed any default in payment of rent. The respondent-tenant also averred that he has never sub-let the

tenanted premises to anyone, and accordingly, prayed for the dismissal of the eviction petition.

4. The petitioner-landlord filed a rejoinder to the said reply, denied the averments made in the reply, and reiterated the pleadings as mentioned in the eviction petition.

5. In order to support his contentions, the petitioner-landlord examined *Rajeev Agrawal* (PW-1) and produced various documents including Ex.1 (Notice), Ex.2 (receipt registry), Ex.3 (U.P.C.), Ex. 4 to 8 (rent receipts), Ex.9 & 10 (certificates issued by the Secretary of Jal Vayu Vihar Maintenance Samiti).

6. In rebuttal, the tenant examined himself *Vinay Agrawal* (DW-1) and *Anil Garg* (DW-2), and produced as many as 58 documents including Ex. A1 to A9 (photocopy of the rent receipt), Ex. A10 to A13 (Bank Slips), Ex. A14 to A23 (postal receipts), Ex. A24 to A27 (returned money order receipts) etc.

7. That the learned Rent Tribunal formulated the following points of determination:

1. आया प्रत्यर्थी ने अर्जीदार को चार माह व उससे अधिक की किराया राशि बावजूद विधिक नोटिस ना तो संदत्त की है न ही निवेदित की है? इसलिये किराया अदायगी में व्यक्तिक्रम के आधार पर अर्जीदार किरायेशुदा परिसर से प्रत्यर्थी को बेदखली का आदेश प्राप्त करने का अधिकारी है ?
2. आया अर्जीदार को वादग्रस्त किरायेशुदा परिसर की अपने निजी उपयोग उपभोग हेतु उचित एवं सद्भाविक आवश्यकता है ? इसलिये अर्जीदार प्रत्यर्थी से वादग्रस्त परिसर का खाली कब्जा प्राप्त करने का अधिकारी है ?
3. आया प्रत्यर्थी ने विवादित परिसर को बिना अर्जीदारान की अनुमति के उपकिराये पर दे दिया है? इसलिये इस आधार पर अर्जीदारान प्रत्यर्थी से वादग्रस्त परिसर का खाली कब्जा प्राप्त करने का अधिकारी है।
4. अनुतोष ?

8. After considering the pleadings of the parties and evidence on record, the learned Rent Tribunal allowed the eviction petition

while deciding Issue No.2 qua *bona fide* necessity in favour of the petitioner-landlord and against the defendant-tenant, whereas Issue No.1 qua default in payment of rent and Issue No.3 qua sub-letting were decided against the petitioner-landlord vide order dated 23.08.2016, and consequent thereto, a recovery certificate was issued in favour of the petitioner-landlord.

9. Being aggrieved by the said order dated 23.08.2016, the respondent-tenant preferred a regular first appeal under Section 19 of the Rajasthan Rent Control Act, 2001, before the learned Appellate Rent Tribunal, Ajmer, qua Issue No. 2, i.e., *bona fide* necessity. Upon hearing both the parties, learned Appellate Rent Tribunal, vide order dated 02.09.2021, allowed the regular first appeal and reversed the findings of the learned Rent Tribunal qua Issue No. 2., i.e., *bona fide* necessity and resultantly set aside the order dated 23.08.2016.

10. Being aggrieved by the order dated 02.09.2021, the petitioner-landlord has preferred the present writ petition.

11. It is pertinent to mention here that the findings of the learned Rent Tribunal qua Issues Nos. 1 and 3, i.e., default in payment of rent and sub-letting, respectively, have not been assailed by the petitioner-landlord. Thus, the findings on the said issues have attained finality.

12. Thus, the limited controversy in the present matter is in regard to whether the finding recorded by the learned Rent Tribunal qua the *bona fide* necessity was rightly set aside by the learned Appellate Rent Tribunal, or whether the learned Appellate Rent Tribunal committed perversity and illegality while reversing the finding of the learned Rent Tribunal.

13. Learned counsel for the petitioner submits that the learned Appellate Rent Tribunal erred in passing the impugned order and failed to appreciate the findings recorded by the learned Rent Tribunal in correct perspective. He further submits that the *bona fide* necessity of the petitioner stood duly proved from the evidence on record; however, the learned Appellate Rent Tribunal while misreading the evidence arbitrarily reversed the said findings. Learned counsel further submits that while deciding Issue No. 2, the learned Appellate Rent Tribunal adopted a hyper-technical approach and did not consider Exhibits 9 and 10 in the correct perspective. He further submits that the learned Appellate Rent Tribunal erred in substituting its own perspective in respect of suitability of the tenanted premises qua the *bona fide* necessity of the landlord, and therefore prays for setting aside the impugned order, being perverse.

14. In order to buttress his contentions, he places reliance upon a judgment passed by the Hon'ble Apex Court in ***Kanhaiya Lal Arya Vs. Md. Ehshan & Ors.*¹**, a judgment passed by a Co-ordinate Bench of this Court in ***Pratap Singh Hada Vs. Rajkumar Jhamb*²**, and a judgment passed by this Court in ***Rakesh Vs. Marwadi Khatri Panchayat*³**.

15. *Per Contra*, learned counsel for the respondent supports the impugned order and submits that the learned Appellate Rent Tribunal has rightly set aside the order dated 23.08.2016 passed by the learned Rent Tribunal. She further submits that in view of the cross-examination of PW-1 the alleged *bona fide* requirement

1 2025 AIR (SC) 1297

2 SB Civil Writ Petition No.18360/2016,

3 2025 RJ (JP) 45511

of the petitioner-landlord has not been substantiated by cogent evidence and, the alleged *bona fide* necessity, at best, amounts to a mere wish or desire rather than a compelling *bona fide* need. she therefore submits that there is no jurisdictional error, legal infirmity or perversity in the impugned order so as to warrant interference by this Court, as the same has been passed after a careful examination of the record, and accordingly prayed for dismissal of the present writ petition.

16. In order to buttress her contentions, she places reliance upon a judgment passed by the High Court of Kerala in ***Ratheesh Kumar Vs. Jithendra Kumar***⁴.

17. Heard the submissions advanced by learned counsel for the parties, and perused the impugned orders as well as the documents placed on record.

18. From a perusal of the record, it is evident that the petitioner-landlord filed an eviction petition under Section 9 of the Act against the defendant-tenant. In brief, the case set up by the petitioner-landlord in the eviction petition was that he is a permanent resident of Ajmer, has been staying in Jaipur in rented premises, and that he wishes to move back to Ajmer and live in his home town and in his own house, i.e., the tenanted premises.

19. From a perusal of the impugned order dated 02.09.2021, it is revealed that the aforesaid reversal by the learned Appellate Rent Tribunal was primarily hinged upon the following grounds: that the petitioner-landlord did not produce sufficient evidence to prove that he is living in rented premises in Jaipur; that the petitioner-landlord has given evasive and uncertain replies to the

questions put forth during cross-examination; that from the cross-examination of *Rajeev Agrawal* (PW-1), the need of the petitioner is not at all proved; and further, that the tenanted premises is not suitable or sufficient to cater to the alleged need of the landlord *etcetra*.

20. From a bare perusal of the record, it is evident that in order to prove the factum of *bona fide* necessity, the petitioner examined himself and produced various documents. Thus, the petitioner-landlord has duly discharged the initial burden of proving the issue of *bona fide* necessity.

21. Furthermore, in order to prove that the petitioner is a permanent resident of Ajmer, has been staying in Jaipur in rented premises, and that he wishes to move back to Ajmer and live in his home town; the petitioner-landlord *Rajeev Agrawal* (PW-1) has filed his affidavit and in his cross-examination dated 27.04.2016, has stated the following:

"...यह परिसर जिसमें मैं वर्तमान में रह रहा हूँ मैंने खरीदा नहीं है बल्कि किराये पर रहता हूँ।"

22. Further, in the absence of a written rent note, in order to prove the factum of tenancy, the petitioner-landlord has also produced Exhibits 9 and 10, which are certificates issued by the Secretary of Jal Vayu Vihar Maintenance Samiti (a registered society), certifying that the family of the petitioner-landlord is living in Jaipur in rented premises, which are not owned by them, and are rather owned by *Mr. K.L. Godara* and *Mr. Sarish Mathur*, thereby discharging their initial burden to prove that they are living in rented premises.

23. The relevant extracts of Exhibits 9 and 10 are reproduced as under:

"Ex.9"

"To whom So Ever It May Concern

This is to certify that Shri Harsh Agarwal S/o Shri Ram Krishan Agarwal is residing with his family as a tenant at Flat No:D-109, Jal Vayu Vihar, Sector-10, Vidhyadhar Nagar, Jaipur 302023, the owner of this Flat is Mr. K.L.Godara."

"Ex.10"

"To whom So Ever It May Concern

This is to certify that Shri Rajiv Agarwal S/o Late Shri Purshottam Dasji is residing with his family as a tenant at Flat No:3, Jal Vayu Vihar, Sector-7, Vidhyadhar Nagar, Jaipur 302023, the owner of this Flat is Mr. Sarish Mathur."

24. From the impugned order dated 02.09.2021, it is also revealed that the learned Appellate Rent Tribunal has held that the petitioner-landlord ought to have examined the actual owners/landlords of the properties mentioned in Exhibits 9 and 10 in order to establish that they live in rented premises. It is pertinent to note that at this juncture that the said certificates in Exhibits 9 and 10 are issued from a registered society and have been signed by the said society's secretary, who is the relevant authority in this regard; Exhibits 9 and 10 cannot be said to be sham documents or *prima facie* insufficient to prove that the petitioner-landlord was living in rented premises. Hence, the petitioner-landlord had duly discharged the initial burden of proof *qua* the fact that they are living in a rented premises at Jaipur.

25. Thus, once the petitioner-landlords discharged their initial burden to prove the said issue in question, the onus shifts onto

the respondent-tenant to prove otherwise; therefore, it was up to the respondent-tenant to lead evidence to controvert the evidence put forth by the petitioner-landlords by leading any documentary proof in consonance with the plea raised in the reply. Whereas, there is nothing on record to suggest that the respondent-tenant has produced any documentary evidence, i.e., certified copy of any sale deed/gift deed/conveyance deed, obtained from the office of the Sub-Registrar or any other authority, or any other proof, i.e., electricity bill, photographs *etcetra* to disprove the factum of *bona fide* necessity of the landlord, or to prove that the landlord is not living in a rented premises or that the landlord owns properties in Jaipur.

26. Further, the tenant, *Vinay Agrawal* (DW-1) in his statement dated 06.06.2016, has stated that he has neither made any attempt to trace out any certificate from the Shops and Establishment Department or RIICO for ascertaining that the petitioner-landlord has a business in Jaipur, nor obtained any documents from the Sub-Registrar to find out as to whether the petitioner-landlord owns any property in Jaipur including the property mentioned in Exhibits 9 & 10. Additionally, DW-1 nowhere deposed that Exhibits 9 & 10 are either sham or forged documents.

27. Similarly, even *Anil Garg* (DW-2) in his statement dated 05.07.2016 has pleaded ignorance as to whether the petitioner-landlord live in Jaipur on a rented premises owned by *Mr. K.L. Godara* and *Mr. Sarish Mathur*.

28. Thus, the reasoning recorded by the Appellate Rent Tribunal that the petitioner-landlord failed to produce cogent evidence is perverse.

29. Furthermore, from a perusal of the record, it is also revealed that the respondent-tenant has not made any effort to disprove Exhibit 9 & 10 by putting any question to PW-1 in his cross-examination. It is trite law that the effect of non cross-examination is that the statement of witness has not been disputed. If the other side wants to challenge any statement made or document produced, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. If no such questions are put, the court would presume that the said statement or document produced, has been accepted.

30. Furthermore, the record reveals that the learned Appellate Tribunal was unnecessarily swayed by a response given by the petitioner-landlord (PW-1) to a solitary question during his cross-examination and erroneously held the same to be detrimental to the landlord's claim qua *bona fide* necessity. It is trite law that a stray sentence elicited during a grueling cross-examination cannot be read in silos to dismantle the otherwise robust or well founded case of the petitioner-landlords. The true meaning and effect of evidence can only be deciphered when all its parts are read harmoniously and as a whole, and reading sentences in silos would lead to a fractured and erroneous appreciation of the evidentiary record.

31. Since the question as to whether the landlord is living in a rented premises has been well proved by the landlord by

discharging his initial burden of proof, the question now arises that whether a landlord wanting to possess the property owned by him is 'reasonable' within the context of *bona fide* necessity. In catena of judgments, the Hon'ble Apex Court, this Court as well as other High Courts have time and again held that the landlord cannot be compelled to live in a rented premises when his own accommodation is available. In the present case, the petitioner-landlord is a permanent resident of Ajmer, lives in Jaipur on a rented premises and wishes to move back from Jaipur to his home town in Ajmer in his own house. Under these circumstances, it cannot be said by any stretch of imagination that the requirement of the petitioner-landlord to live in his own house is not *bona fide* or genuine. The petitioner-landlord, who is presently living in a rented premises has all the right to shift to his own property.

32. It is also evident from the impugned order that the learned Appellate Rent Tribunal has also held that the tenanted premises is insufficient to cater the need of the petitioner-landlord, thereby substituting its own perspective instead of the landlord's for determining the issue qua *bona fide* necessity, which is impermissible in law as it is a well established principle of law that the landlord is the best judge of this residential requirement. He has complete freedom in the matter. It is no concern of the court to dictate the suitability of the tenanted premises for the landlord's occupation, as the same has to be adjudged from the convenience of the landlord and his family members.

33. Further, in the matter of **Kanhaiya Lal Arya** (*Supra*), the Hon'ble Apex Court has held that the landlord is the best judge to

decide the tenanted premises for satisfying his *bona fide* necessity.

34. Further as far as the finding of the learned Appellate Rent Tribunal qua non framing of issues at a particular stage of the trial is concerned. It is pertinent to mention here that Section 21(3) of the Rajasthan Rent Control Act, 2001, explicitly reads as under:

"(3) The Rent Tribunal and the Appellate Rent Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (Central Act No. 5 of 1908), but shall be guided by the principal of natural justice and subject to other provisions of this Act or the Rules made thereunder and shall have powers to regulate their own procedure, and for the purpose of discharging their functions under this Act they shall have, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act No. 5 of 1908) while trying a suit or an appeal in respect of following matters, namely:-....."

35. Thus, it is evident that the Rent Tribunals are not bound by the procedure laid down by the Code of Civil Procedure, 1908. Even otherwise, from a bare reading of the order dated 23.08.2016, it is evident that the learned Trial Court has adjudicated the matter issue wise (being default in payment of rent, *bona fide* necessity and sub-letting), thus the reasoning given by the learned Appellate Rent Tribunal cannot be countenanced, merely because formal issues were not framed at a particular stage of the trial.

36. As far as the judgment passed by the Kerala High Court, relied upon by learned counsel for the respondent in **Ratheesh Kumar** (*Supra*), is concerned, it is evident from a perusal of the same that the case stands on a different footing and is discernibly distinguishable from the facts of the present case.

37. After considering the entire conspectus of the case, it is clear that the present case is one where the petitioner-landlord, who is

living in rented accommodation at Jaipur, wants to re-settle at his hometown, i.e., Ajmer, and the *bona fide* necessity has been duly proved by the landlord and the same has been accepted by the learned Rent Tribunal after a meticulous examination of pleadings and evidence, and a recovery certificate was issued vide order dated 23.08.2016, but the same has been perversely reversed by the learned Appellate Rent Tribunal. The learned Appellate Rent Tribunal committed illegality and perversity, and had misread the evidence on record to arrive at a different conclusion by reversing the well-reasoned findings recorded by the learned Rent Tribunal.

38. This Court, therefore, finds that the reasons recorded by the learned Appellate Rent Tribunal while reversing the findings of the learned Rent Tribunal are arbitrary, perverse, based on a misreading of the evidence available on record.

39. Thus, the findings recorded by the learned Appellate Rent Tribunal qua Issue No.2 (*bona fide* necessity) being perverse, are liable to be set aside by exercising the powers conferred by Article 227 of the Constitution of India.

40. Accordingly, the present writ petition stands allowed, and consequent thereto, the impugned order dated 02.09.2021 passed by the learned Appellate Rent Tribunal, Ajmer, in Rent Appeal No. 70/2016, is set aside and the order dated 23.08.2016 passed by the learned Rent Tribunal, Ajmer, in Original Application No. 32/2011, stands restored.

41. The stay application and all pending applications, if any, also stand disposed of.

(MANEESH SHARMA),J