

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 56 OF 2001@@
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C.K. ABDUL REHAMAN ... APPELLANT (S)

VERSUS

B.C. PUTTA THAYAMMA ... RESPONDENT (S)

Date : 06/11/2001 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Appellant (s)

Mr. Nikhil Nayyar, Adv.
Mr. Trideep Pais, Adv.

For Respondent (s)

Mr. Har Dev Seingh, Sr. Adv.
Ms. Madhu Moolchandani, Adv.

UPON hearing counsel the Court made the following
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The appeal is dismissed in terms of the signed order.
No order as to costs.

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Sarita (Radha Rani Bhatia)@@
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Court Master@@
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(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 56 OF 2001@@
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C.K. ABDUL REHAMAN

...APPELLANT

VERSUS

B.C. PUTTA THAYAMMA

...RESPONDENT

O R D E R@@  
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The tenant in the suit accommodation has filed this civil appeal by special leave. It is not disputed that the suit premises are owned by the landlord-respondent and are held by the appellant as tenant on a monthly rent of Rs.500/-. The respondent initiated proceedings for eviction of the appellant under Clauses (h) and (p) of sub-Section (1) of Section 21 of the Karnataka Rent Control Act, 1961 (hereinafter referred to as the 'Act' for short). So far as the ground under Clause (h) is concerned, it has been negatived by the trial court as well as by the High Court and the landlord has not come up in appeal against that part of the order of the High Court. So far as the ground under Clause (p) is concerned, the trial court negatived the same. The High Court has reversed the finding of the trial court and granted a decree in favour ..2/-

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of the respondent. According to the respondent, the tenant has acquired vacant possession of a suitable building, satisfying his requirement of the purpose for which the suit accommodation was let out to him. This plea has been upheld by the High Court.

The appellant-tenant is running an industry in the name of M/s. Tip Top Plastic Industries. The industry employs certain workers. The accommodation was let out to the appellant for the purpose of accommodating workers of the industry and for use as go-down. The suit premises are 15' X 22' in dimension and consist of three rooms on the ground floor and one room on the first floor including a kitchen. As per statement of the appellant, there are about 15 employees housed in the suit premises.

The landlord alleged the tenant to have acquired vacant possession of three buildings which are : (i) a residential houses situated at 335, 58th Cross, III Block, Rajajinagar, admittedly owned by the tenant, (ii) a building situated at 87, Kilari Road, in which there are two shops on the ground floor, which according to the tenant is owned by his wife; while one shop is rented out to someone else, the other shop has been taken on lease by the tenant from his wife; and (iii) a building ..3/-

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named Aristo Lodge which is a three storyed building, wherein a restaurant and a lodge is being run by a partnership firm in which the appellant is also a partner

to the extent of 10 per cent. It appears that any plan of the building situated at 58th Cross, Rajajinagar was not available on record and, therefore, for a just decision of the case, this Court by its Order dated 4th September, 2000, directed the appellant to place on record the plan of the building. That has been filed. The plan filed as Annexure-P7, with the affidavit of the appellant dated 26th September, 2000, shows that it is a three storied house. There is a cellar consisting of two rooms and a hall. On the ground floor there are about 4-5 rooms of different dimensions, a hall, a toilet, a kitchen and a dining room. Similar accommodation is to be found on the second floor. The property is situated in an area of 61' X 40' (2440 sq.ft.) approximately. The High Court has pointed out that the ownership of, and acquisition of possession by, the tenant of the said residential house is not in dispute. Though it was contended before the High Court that the building was not a suitable premises for accommodating the workers who were more than 20 in number, such plea of the tenant was

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repelled by the High Court on the ground that a plan of the building, though available with the tenant, was not brought on record and during the course of his statement also the tenant did not disclose the extent and nature of the accommodation available in the said premises. The High Court, in substance, drew an adverse inference against the tenant for withholding material evidence. However, as stated hereinabove, the plan of the building has been brought on record in this Court and therefrom it is clear that the nature and extent of the accommodation available in the residential house situated at Rajajinagar is better and much more than the suit premises. Once it is shown that the tenant has acquired vacant possession of a building which is shown to be prima facie suitable for satisfying the requirement of the tenant, then the onus shifts on the tenant to demonstrate by adducing satisfactory evidence that the building was not suitable because the relevant facts enabling a finding as to unsuitability being arrived at would be within the knowledge of the tenant. It was contended before the High Court that the building was in occupation of a large family of the tenant and, therefore, could not have been made available for

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occupation by the workers. The High Court pointed out that this fact that the building at Rajajinagar was in actual occupation of the family of the tenant, was not stated by the tenant himself when he appeared in the witness box and therefore, such a plea was not available to be raised at the time of hearing. With the assistance of learned counsel for the appellant, we have gone through the statement of C.K. Abdul Rehman, RW1, the appellant, and we find that the High Court is right in pointing out the infirmity in the evidence adduced by the tenant. Inasmuch as the tenant has acquired vacant possession of a suitable building which is also owned by him, we agree with the High Court in holding that the case for eviction under Clause (p) of sub-Section (1) of Section 21 of the Act was made out.

In view of the aforesaid finding, it is not

necessary for us to deal with the availability and suitability of the other two accommodations which were pointed out by the respondent as available to the appellant-tenant and providing the ground for eviction under Clause (p).

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For the foregoing reasons, we do not find any merit in this appeal. It is dismissed accordingly.

Inasmuch as the workers employed in the tenant's factory are living in the suit accommodation and the tenant shall have to make arrangements for shifting them elsewhere, the tenant is allowed three months' time from today for vacating the premises subject to the tenant filing the usual undertaking on affidavit before the trial court, within one month from today, undertaking to deliver vacant and peaceful possession to the landlord on the expiry of three months' time to clear all the arrears of rent within a month and to continue to clear the subsequent monthly arrears on or before 15th day of each month.

No orders as to costs.

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.....J  
(R.C. LAHOTI)

New Delhi,  
November 6, 2001.

.....J  
(BRIJESH KUMAR)