



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No.3794/2023

Suresh S/o Late Shri Chandi Prasad, R/o House No. 341,bandri Ka Nasik, Subhash Chowk, Jaipur Presently Residing At F-86, Vyas Colony, Shastri Nagar, Jaipur.

-----Petitioner

Versus

1. Dhruv Narayan Purohit S/o Late Purohit Swaroop Narayan Ji, R/o House No. 20, Purohit Ji Ka Bagh, Gopinath Marg, Jaipur.
2. Kamal Son Of Late Shri Chandi Prasad, R/o House No. 341, Bandri Ka Nasik, Subhash Chowk, Jaipur Presently Residing At F-86, Vyas Colony, Shastri Nagar, Jaipur.
3. Narendra Kumar Son Of Late Shri Chandi Prasad, R/o House No. 341, Bandri Ka Nasik, Subhash Chowk, Jaipur Presently Residing At F-86, Vyas Colony, Shastri Nagar, Jaipur.
4. Rajendra Kumar Son Of Late Shri Chandi Prasad, R/o House No. 341, Bandri Ka Nasik, Subhash Chowk, Jaipur Presently Residing At F-86, Vyas Colony, Shastri Nagar, Jaipur.

-----Respondents

For Petitioner(s) : Mr. Yogesh Kumar Sharma
For Respondent(s) : Mr. Vipul Jain

JUSTICE ANOOP KUMAR DHAND
Order

01/07/2025

1. By way of filing this writ petition, a challenge has been led to the impugned order dated 14.10.2022 passed by the Rent Tribunal, Jaipur Metropolitan II, Jaipur by which the application filed by the petitioner under Section 11 CPC has been rejected.

2. Learned counsel for the petitioner submits that the respondents-landlord filed a suit for eviction under Section 9 of the Rajasthan Rent Control Act, 2001 (for short "the Act of 2001") on the ground of bonafide necessity, comparative hardship and change of user by the petitioner-tenant. Learned counsel submits



that several issues were framed in the earlier round of litigation in the suit submitted by the respondents and finally the suit for eviction was rejected by the court of Civil Judge, Jaipur Metropolitan vide judgment dated 20.10.2018. Learned counsel submits that aggrieved by the aforesaid judgment, an appeal was preferred by the respondent-landlord before the Appellate Court, i.e., Additional District Judge No.14 Jaipur Metropolitan, however, the said appeal was also rejected vide judgment dated 24.07.2019 and the cross-objections submitted by the petitioner in the aforesaid appeal were rejected vide judgment dated 24.09.2019, hence the original judgment dated 20.10.2018 has attained finality.

3. Learned counsel for the petitioner submits that now a successive suit with the same pleadings on the ground of bonafide necessity, alternative accommodation and non-user has been submitted by the respondents against the petitioner for ejecting him from the subject premises. Learned counsel submits that once the dispute between the parties has been decided by the Civil Judge in the earlier round of litigation vide judgment dated 20.10.2018, the successive suit filed by the respondents is barred by the principles of *res judicata* and the same is hit by Section 11 CPC and is not maintainable and liable to be rejected and that is why an application in this regard under Section 11 CPC was submitted. However, the same was rejected by the Tribunal vide order dated 14.10.2022, hence under these circumstances, interference of this Court is warranted.

4. *Per contra*, learned counsel for the respondent-landlord opposed the arguments raised by counsel for the petitioner and



submitted that in the earlier round of litigation, i.e., the suit submitted by the respondents against the petitioner, the ground taken by the respondents for filing the suit was bonafide necessity on account of need to run a saree shop, but on account of long pendency of the earlier suit, the need was changed and now a fresh need arises with the respondents for operating the business of tours and travels, hence, on the ground of fresh bonafide need and necessity, the successive suit was filed along-with two other fresh grounds, i.e., alternative accommodation available with the petitioner and non-user of the subject shop by the petitioner. Learned counsel submits that all these facts and pleadings were appreciated by the Tribunal, while rejecting the application submitted by the petitioner vide impugned order dated 14.10.2022, hence, under these circumstances, interference of this Court is not warranted.

5. In support of his submissions, learned counsel for the respondents has placed reliance upon the following judgments:-

(1) Surajmal Versus Radheyshyam reported in **1988**

(3) SCC 18;

(2) N.R. Narayan Swamy Versus B. Francis Jagan

reported in **2001 (6) SCC 473;** and

(3) Ratni Devi Versus LR's of Kishan Kanwar &

Others reported in **2014(1) WLN 433.**

6. Heard and considered the submissions made at Bar and perused the material available on the record.

7. Perusal of the record as well as the impugned order dated 14.10.2022 reveals that, on earlier occasion, the suit for eviction was filed by the respondents against the petitioner on several



grounds including bonafide need and necessity. This fact is not in dispute that the earlier suit submitted by the petitioner was rejected vide judgment dated 20.10.2018. This fact is also not in dispute that an appeal against the aforesaid judgment was also rejected by the Appellate Court vide judgment dated 24.07.2019. This fact is also not in dispute that in the earlier round of litigation ground for bonafide necessity by the respondents was taken as the subject shop was required for the purpose of running the business of a saree shop but in the instant case, the bonafide need has been changed by the respondents and this time he has come up with a new case of requirement of the subject shop for operating the business of tours and travels. Apart from above two other grounds, i.e., availability of alternative accommodation as well as non-user have been taken by the respondents in the successive suit submitted against the petitioner before the Tribunal under Section 9 of the Act of 2001.

8. It is settled proposition of law that successive suit is not barred, if fresh grounds have arisen to file the same and filing the successive suit does not amount to *res judicata*, as it has been held in the following judicial verdicts:-

8.1 The Hon'ble Apex Court in the case of **N.R. Narayan Swamy** (supra), it has been held in Para 6 & 10 as under:-

"6. In our view, the High Court ought to have considered the fact that in eviction proceedings under the Rent Act the ground of bona fide requirement or non-payment of rent is a recurring cause and, therefore, landlord is not precluded from instituting fresh proceeding. In an eviction suit on the ground of bona fide requirement the genuineness of the said ground is to be decided on the basis



of requirement on the date of the suit. Further, even if a suit for eviction on the ground of bona fide requirement is filed and is dismissed it cannot be held that once a question of necessity is decided against the landlord he will not have bona fide and genuine necessity ever in future. In the subsequent proceedings, if such claim is established by cogent evidence adduced by the landlord, decree for possession could be passed. {Re: K.S. Sundararaju Chettiar vs. M.R. Ramachandra Naidu [MANU/SC/0449/1994 : (1994) 5 SCC 14 (para 10)] and Surajmal vs. Radhe Shyam [MANU/SC/0522/1988 : (1988) 3 SCC 18]}.

7. xxx xxx xxx

8. xxx xxx xxx

9. xxx xxx xxx

10. The aforesaid rule would have no application in a proceeding initiated for recovering the suit premises on the ground of bona fide requirement which is a recurring cause. Order XXIII rule 1(4)(b) precludes the plaintiff from instituting any fresh suit in respect of such subject matter or such part of the claim which the plaintiff has withdrawn. In a suit for eviction of a tenant under the Rent Act on the ground of bona fide requirement even though the premises remains the same, the subject matter which is cause of action may be different. The ground for eviction in the subsequent proceedings is based upon requirement on the date of the said suit even though it relates to the same property. Dealing with similar contention in Vallabh Das vs. Dr. Madanlal and Others [MANU/SC/0367/1970 : (1970) 1 SCC 761]] this Court observed thus:-

"The expression "subject-matter" is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the Plaintiff seeks to enforce. That expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first



suit, it cannot be said that the subject-matter of the second suit is the same as that in the previous suit."

8.2 The Hon'ble Apex Court in the case of **Surajmal** (supra), it has been held in Para 8 as under:-

"8. The learned Counsel for the appellant Sunderbai contended that in substance the case of the plaintiff-respondent in the earlier eviction suit and in the present suit is the same and since the earlier suit was dismissed the present suit also should be dismissed. The High Court in paragraph 4 of its judgment pointed out that the nature of requirement pleaded in the earlier suit was different from that in the present suit. The first appellate court while deciding the issue against the defendant observed that the bona fide need must be considered with reference to the time when a suit for eviction is filed and it cannot be assumed that once the question of necessity is decided against the plaintiff it has to be assumed that he will not have a bona fide and genuine necessity ever in future. We are agreement with the views as expressed by the two courts."

8.3 The co-ordinate Bench of this Court in the case of **Ratni Devi** (supra) has been held in Paras 4 & 5 as under:-

"4. From perusal of the judgment impugned it is apparent that the Tribunal considered the aspect regarding filing of the suit earlier by the landlord and its dismissal for want of prosecution. Learned Tribunal gave a definite finding that the earlier suit was based on the grounds of bonafide and reasonable necessity whereas the present application is based on the ground of availability of alternative accommodation. The Tribunal also held that by a flux of time the grounds for eviction arises and also vanishes. In the instant matter the bonafide necessity may would have not been existing at the time of dismissal of earlier suit but that may arise at subsequent stage too. With regard to availability of alternative accommodation a finding of fact is given that the petitioner





tenant is having three adequate accommodations to reside but just to retain the rented premises the issue has been contested.

5. I am in absolute agreement with learned Tribunals below. So far as the earlier suit is concerned, that was dismissed in default and the same was based on the ground of reasonable and bonafide necessity. The subsequent application was filed by the applicant under the Act of 2001 with a ground of having alternative accommodation with tenant and as such it is not at all barred by principles of res-judicata. With regard to availability of alternative accommodation the tenant accepted that she is having a residential house bearing No.10/254, Chopasani Housing Board, Jodhpur. The accommodation aforesaid is also quite near to the rented premises. Beside the above, her son and husband too are having their own residential houses. The residential house of her husband is 90, Amar Nagar, Jodhpur whereas he is residing too."

9. A suit for eviction from the premises cannot be held to be barred even if the question of necessity has been decided against the landlord on the previous occasions, so as to hold that he will never have bonafide and genuine necessity in future.

10. In the instant case also, a successive suit has been filed on the fresh grounds, hence, the Tribunal has not committed any error in rejecting the application filed by the petitioner under Section 11 CPC.

11. This Court finds no merit and substance in this writ petition and the same is hereby dismissed.

12. Stay application as well as all applications (pending, if any) also stand dismissed.

13. Before parting with this order, it is made clear that whatever has been observed by this Court is confined to application





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submitted by the petitioner under Section 11 CPC. This Court has not expressed its opinion on the merits of the case. The observation made by this Court should not be considered as an opinion on the merits. The Trial Court would be at liberty to hear and decide the suit on its merits on the basis of evidence of both sides.



(ANOOP KUMAR DHAND),J

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