

(1990) 03 MP CK 0003
In the Madhya Pradesh High Court
Case No : S.A. No. 356 of 1988 (J)

Bajnath Rajput

APPELLANT

Vs

Narayan Prasad Gupta

RESPONDENT

Date of Decision : 06-03-1990

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 23, 23A

Citation : (1990) MPJR 381

Hon'ble Judges : B.C. Varma, J

Bench : Single Bench

Advocate : P.S. Gothwal, for the Appellant; R.S. Tiwari, for the Respondent

Judgement

B.C. Varma, J.

The Appellant defendant is admittedly a tenant in certain premises of which the Respondent Plaintiff is the owner landlord. Desirous of exercising his right of reversion and to secure possession from the appellant, the department instituted the action against the Appellant for his eviction from the suit-accommodation before the Rent Controlling Authority, Jabalpur on the ground that the premises are bonafide required by him for his occupation. As the law then stood, the action was required to be instituted by applicant u/s 23-A of the Madhya Pradesh Accommodation Control Act, 1961 before the Rent Controlling Authority. Special procedure was prescribed for dealing with such applications. The relevant part of that procedure is that the Defendant tenant in those proceedings was required to apply and obtain leave to defend within a specified period of 15 days of the service of the notice of the application upon him. It is only when such leave was granted, that the tenant was permitted to defend.

In the instant case, as the Appellant tenant failed to avail of that opportunity within the prescribed time" he was denied permission to defend. The Appellant approached the High Court against that order refusing him leave to defend but remained unsuccessful. Thereafter, the Respondent landlord examined himself as

a witness on 22-1-85 and the case was closed for orders. Somehow, the orders could not be delivered because of the intervention of the High Court which stayed the passing of the final order in the proceedings before the Rent Controlling Authority.

An important change was then introduced by an amendment of Section 23 of the Accommodation Control Act, 1961. This was by Section 9 of the Madhya Pradesh Accommodation Control (Amendment) Act, 1985. A new Section 23-J was introduced. The effect of this amendment is that the action before the Rent Controlling Authority for ejectment of the tenants on certain specific grounds alone could be filled by persons belonging to categories specified in Section 23-J. All those who did not belong to those categories, were required to avail of the remedy of a regular civil suit in a Civil Court. The amendment also made a provision for the pending cases. Section 9 of that Amendment Act, 1985 provides that the applications filed by the landlords other than those defined in Section 23-J, to evict the tenant, exclusively on the ground of bonafide requirement of accommodation u/s 23-E of the principal Act before 16th January, 1985 and pending on such date before the Rent Controlling Authority shall stand transferred to a Civil Court of competent jurisdiction and such Court shall proceed to dispose of the same in accordance with the provisions of Chapter III as if it were a plaint.

Since the Respondent's application before the Rent Controlling Authority squarely fell within the ambit of this provision, it stood transferred to the Civil Court.

When the matter came to the Civil Court, notices to the parties were issued. Treating the application as a plaint in a civil suit, the Respondent Plaintiff with permission of the Court paid the necessary court-fees as would have been levied on the application if it were initially filed as a plaint in the Civil Court. When this was done, the Appellant made two applications. By one of such applications, he applied for permission to accept a written Statement filed by him in that Court. By the other application he sought permission to cross-examine the Respondent by recalling him a witness. Both these applications were refused. The Civil Court, relying upon the statement made by the Respondent before the Rent Controlling Authority, decreed the suit for eviction against the Appellant. In appeal against the Decree before the District Judge, the Appellant made an application under Order 41 Rule 27 C. P. C. for filing some additional evidence in the shape of documents. The appeal and that application were both rejected. This is how this Second Appeal u/s 100 C. P. C, is filed by the Appellant and has been admitted by this Court at the preliminary hearing on the following substantial question of law:

Whether in the present case after the application for eviction made by the Plaintiff Respondent to the Rent Controlling Authority was transferred to the Civil Court u/s 9 of the M. P. Accommodation Control (Amendment) Act, (No. 7 of 1985), the procedure followed by the Civil Court was not in accordance with the

provisions of the said section and as such, the Defendant Appellant having been deprived of opportunity to contest the suit, the decree for eviction passed against him on the ground specified in Clause (f) of Sub-section (1) of Section 12 of the M. P. Accommodation Control Act, is liable to be set aside.

The question for consideration really is as to the procedure to be followed by the Civil Court on the transfer of the application filed before the Rent Controlling Authority in view of Section 9 of the M. P. Accommodation Control (Amendment) Act, 1985. The relevant portion of Section 9 of that Amendment Act is:

Such Court shall proceed to dispose of the same in accordance with the provisions of Chapter III as if it were a plaint.

Two things emerge from this provision. First, that it creates a fiction in as-much as, the application filed before the Rent Controlling Authority is to be treated as a plaint although no civil suit was instituted and there was in fact no plaint. It is only by fiction that the document viz. the application filed by the landlord before the Rent Controlling Authority is to be treated on its transfer to the Civil Court, as a plaint. Fiction is an assumption which the law does not allow to be disproved that certain matter is true, whether it is or not. It is often used to give Court jurisdiction or to modify operation of a rule. Chief Justice G. P. Singh, (Retired) of this Court, in his work "Principles of Statutory Interpretation", Fourth Edition, at page 208, has very lucidly demonstrated as to how a provision creating legal fiction has to be interpreted. It is said that the Court must first ascertain the purpose for which a legal fiction is created, and after ascertaining this, the Court is to assume all those facts and consequence which are incidental or inevitable corollaries to the giving effect to the fiction. Full effect should be given to a fiction and it should be carried to its logical conclusion. (See: *Boucher Pierre Andre Vs. Superintendent, Central Jail, Tihar, New Delhi* and *Another*, and *American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. and Another*, In *Commissioner of Income Tax, Delhi Vs. S. Teja Singh*, it is laid down that it would be proper and even necessary to assume all those facts on which alone the fiction can operate. It will be useful to quote Lord Asquith in *East End Dwelling Co. Ltd. v. Finsbury Council* (1951) 2 All ER 587 (HL).

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

At the same time, the legal fiction should not be extended beyond the purpose for which it is enacted for "legal fictions are created only for some definite purpose" They have to be limited to the purpose for which they are created and should not be extended beyond that legitimate field. See *The Bengal Immunity*

Company Limited Vs. The State of Bihar and Others, One must, therefore, before applying the legal fiction created by the aforesaid Section 9 of the M. P. Accommodation Control (Amendment) Act, 1985 as certain its purpose This process shall necessitate the brief resume of the history of Rent Control Legislation in this State.

The shortage of accommodation noticed at the rent legislation. The Rent Control Orders and Rent Acts were chiefly designed to prevent rack-renting and arbitrary eviction of tenants. In the then State of Madhya Pradesh we had the C. P. and Berar Regulation of Letting of Accommodation Act, 1946, C. P. and Berar Letting of Houses and Rent Control Orders, 1947 and 1949. Rent Control Orders were also in force in Vindya Pradesh, Bhopal, Sironj and Madhya Bharat regions. Under the scheme of C. P. and Berar Letting of Houses and Rent Control Order, a landlord wanting to evict his tenant was required to first approach the executive authority, (ordinarily, a Deputy Collector) the Rent Controller who on satisfaction of existence of certain grounds, would accord permission to the landlord to terminate the contractual tenancy. His order was subject to an appeal and the matters were offer taken to High Court in its writ jurisdiction. Then would commence the second round of litigation. Equipped with such permission, the landlord would terminate the tenancy by a quit notice u/s 106 of the Transfer of Property Act and then file a regular civil suit before competent civil Court for a decree for eviction. The decree could well be subjected to first and second appeals. Apparently, the two rounds of litigation resulted in the delaying recovery of possession by landlords even in genuine cases. After the formation of present State of Madhya Pradesh on November 1, 1956, unified law relating to accommodation controls was made applicable to the State when Madhya Bharat Accommodation Control Act, 1955 was extended to the entire Madhya Pradesh. This has since been superseded by the M. P. Accommodation Control Act, 1961 now in force. That eliminated approach to two different forums and relieved landlords to some extent. Suits for eviction the reafter can be filed directly in civil Courts for eviction of tenants and may be decreed on establishing one or more grounds under provisions of those Acts. Even so, with a view to expedite recovery of possession from tenants by certain categories of landlords, special provision was enacted in Section 20 of 1961 Act and later amended by inserting Sections 20-A and 20-A A giving further facility in the matter of securing possession of premises from their tenants on the ground that the accommodation was required bonafide. Production of certain certificate as proof of bonafides of requirement was held sufficient. These categories included members of Armed Forces of Union, members of the family of deceased members of such Armed Forces, the widow of such member of Armed Forces under certain circumstances, a retired Government servant or the members of the family of deceased retired Government servant. The obvious purpose of inserting these provisions was to expedite recovery of possession from tenants by persons belonging to those categories. Even so, it was felt that the provision contained in Sections 20-A and 20-AA of the Accommodation Control Act did not adequately serve its purpose

and could not achieve the desired results. The legislature, in its wisdom, then thought fit to change the form itself and take away jurisdiction of the civil Courts and instead vest jurisdiction in Rent Controlling Authority in that regard by adopting, a summary procedure for disposal of such cases. It was felt that such change was necessary for giving impetus to building activities by private owners for their use. To achieve this end, M. P. Accommodation Control Act, 1961 was further amended by the M. P. Accommodation Control (Amendment) Act, 1983 whereby Sections 20-A and 20-AA were deleted and new Chapter III-A with caption "Eviction of Tenants on grounds of bonafide requirements" was inserted. Section 23-A introduced by that Amendment Act permitted all landlords requiring accommodation for residential or non-residential purposes, to approach the Rent Controlling Authority by an application signed and verified in the manner provided in Rules 14 and 15 of Order 6 of the First Schedule to the Code of Civil Procedure, 1908 as if it were a plaint to the Rent Controlling Authority. Section 23-C with a view to avoid frivolous contests, provides that the tenant within 15 days of the service of summons on him, can obtain leave from the Rent Controlling Authority by making an application duly supported by an affidavit stating the grounds on which he seeks to contest the application. Section 23-D containing the procedure to be followed by the Rent Controlling Authority in disposal of such applications, enacts that as far as practicable, the procedure should be that of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887. Instead of providing an appeal against the orders passed by the Rent Controlling Authority on such application, revision to the High Court alone is provided u/s 23-E on certain grounds. The obvious purpose of this change is to achieve speedy recovery of accommodation by all those who require that accommodation bonafids either for residential or non-residential purposes.

It is significant to note that this time the departure from ordinary procedure of a civil suit is not based upon categories of landlords but the basis is the ground on which the eviction is sought. It was, however, felt and it was brought to the notice of the Government that the new forum provided by the said amendment was being misused by certain landlords to evict tenants. The Government therefore thought fit to restrict the application of that provision also only to the specified categories of landlords mentioned in Section 23-J, introduced by the M. P. Accommodation Control (Amendment) Act, 1985. In respect of other categories of landlords whose applications for eviction were pending disposal before Rent Controlling Authority u/s 23-A, provision has been made in Section 9 of the Amending Act, 1985. I have quoted the relevant part of that section earlier. All those applications stood transferred to civil Court and are required to be disposed of as indicated therein.

From above narration, it appears that at one stage all the landlords seeking eviction of their tenants on one or more grounds u/s 12(1) of the Accommodation Control Act were required to file a civil suit before a civil Court of competent jurisdiction. Provision was made to expedite cases of certain categories of persons. Later forum was changed in respect of landlords who

desired possession of tenanted accommodation on grounds of bonafide requirement for residential or non-residential purposes. A summary procedure was prescribed to achieve this speedy disposal. Now the approach to this forum for the said purpose is restricted to certain categories of persons only and the pending cases of persons falling outside those categories are again required to be decided by the civil Court like any other suit. The obvious purpose of such change is to avoid misuse of that provision, and but for certain categories of persons, leave the rest to the ordinary remedy of civil suit. The deeming provision contained in Section 9 of the M. P. Accommodation Control (Amendment) Act, 1985 as quoted above, is to be construed in the light of this purpose.

In my opinion, the purpose of fiction created by Section 9 of the M. P. Accommodation Control (Amendment) Act, 1985 can be served only by treating the application before the Rent Controlling Authority as a plaint in a civil suit. The proceedings in civil Court initiated on the filing of the plaint are a suit which has to be proceeded and tried in the manner laid down in the Schedule to the Code of Civil Procedure. If the application has to be treated as a plaint, it must suffer all the incidents of a plaint and fulfil all its requirements. According to Section 23-A of the Accommodation Control Act, the application filed before the Rent Controlling Authority has to be signed and verified in the manner provided in Rules 14 and 15 of Order 6. Plaint filed before the civil Court, in addition, has to be valued for purpose of court-fees and jurisdiction and has to be duly stamped. This Court in *M/s Decon Marketing Ltd. v. Kallu Bhai* First Appeal No. 28 of 1986 (Indore) decided on 1-8-86. emphasised the requirement of payment of necessary court-fees when an application filed before the Rent Controlling Authority stood transferred to the civil Court and has to be dealt with as if it were a plaint. Once this is done, there is a validly instituted suit before the civil Court and needless to say that it has then to proceed according to Code of Civil Procedure.

The Rent Controlling Authority while disposing of the application u/s 23 A of the Accommodation Control Act has to apply, as far as practicable, the same procedure as is applied by Courts of Small Causes including the recording of evidence under the Provincial Small Cause Courts Act, 1937. It is also provided u/s 23-D of the Act that it shall be presumed unless contrary is proved that the requirement of the landlord of categories specified in Section 23-J is bonafide. This procedure now is restricted by M. P. Accommodation Control (Amendment) Act, 1985 only to the categories of landlords mentioned in Section 23-J. It is, therefore, obvious that when the application filed before the Rent Controlling Authority is to be treated as a plaint on its transfer to the civil Court, this summary procedure coupled with the presumption in favour of the landlord is not available to such transferred application to be treated as plaint in the suit. On logically extending the fiction so created, the result is that the procedure applicable to plaint in civil suit as contained in Code of CPC but not the one contained in various clauses of Section 23 of the Accommodation Control Act is

to apply to the application which stood transferred to the civil Court in terms of Section 9 of the M. P. Accommodation Control (Amendment) Act, 1985. In my opinion, this shall also include the procedure to be adopted by the Court relating to the service of summons on the tenant-Defendant. After treating the application as a plaint, summons have to be served upon the Defendant as required by Order 5 CPC. Non issuance of summons pursuant to Order 5 of the Code of CPC was held to have vitiated the entire procedure before the civil Court commenced on receiving an application on transfer from the Rent Controlling Authority in M/s Decon Marketing case (Supra). The CPC permits the Defendant in a suit to file a written statement as of right on receipt of summons of the suit. The Defendant can even apply for rejection of the plaint on grounds contained under Order 7, Rule 11, Code of Civil Procedure. The CPC does not require such Defendant to obtain permission or leave to Defendant the civil suit. There he can deny all the allegations in the plaint and put the Plaintiff to prove of all those allegations unlike the provisions contained in Section 23-C and 23-D (3) of the Accommodation Control Act. The Plaintiff may by non suited if he does not establish the case set out in the plaint. At the same time, on the application being transferred to the civil Court, the Plaintiff-landlord can seek eviction at one or more grounds mentioned in Section 12 (1) of the Accommodation Control Act in addition to the grounds mentioned in the application filed before the Rent Controlling Authority. Thereupon, the Defendant shall have a right to contest those grounds. It will thus be seen that on receipt of application from the Rent Controlling Authority and on its being treated as a plaint in civil suit, the entire procedural complex including the scope of right of the Defendant to resist the action changes. The rights of the Defendant widen and he can then defend that suit without any leave for the purpose from the Court. I am, therefore, of the opinion that even if during the proceedings before the Rent Controlling Authority leave to defend was either not asked for within specified period of 15 days on receipt of notice of that application or leave was refused in terms of Section 23-C of the Accommodation Control Act, fresh right accrues to the Defendant to defend the entire suit in civil Court where the procedure for trial shall be governed by the Code of CPC and not by the provisions of the Court of Small causes.

During the course of argument, the learned Counsel referred to three decisions of this Court on the subject, one of which I have already referred to earlier. In that decision (M/s Decon Marketing Ltd. v. Kallu Bhai), (Supra) the view taken is that on receipt of the application, it is only on payment of requisite court-fee that it can be taken to be a plaint in a duly instituted suit and the summons thereafter has to be issued to the defendant in accordance with Order 5 C. P. C. In Ravindrakumar v. Prakashchand 1989 M.P.L.J. 195. the view taken by the Division Bench is that on transfer of the application to the civil Court and on its being treated as a plaint, the incidents of regular civil suit apply and a decree passed in such a civil suit even without a proper court-fee cannot be said to be a nullity, No doubt in para 6 of the judgment, a sentence to the following effect

appears:

It is, therefore, obvious that all the incidents of a regular civil suit would apply to its trail in the civil Court from that stage.

In that case, execution of a decree for eviction was being resisted on the ground that it was passed in a plaint with deficit court-fee. The Court held that the suit could not be dismissed on that count and it was more so because the civil Court did not exercise the power under Order 7, Rule 11, Code of Civil Procedure. It is in this context that the Court said that on receiving the application from the Rent Controlling Authority, the incidents of regular civil suit would apply to its trail from that stage. The third decision which has been followed and applied in Ravindra Kumar's case (supra) is Pannalal v. Dineshchand 1986 M.P.L.J. 680. In that case, the controversy was whether on transfer of the application to the civil Court and on its being treated as a plaint whether the evidence recorded by the Rent Controlling Authority should be excluded from consideration. It was held that the evidence recorded before the Rent Controlling Authority could not be so excluded. In this context it was observed that it will not be correct to held that the trail in such a suit be invariably demove when the parties are satisfied with the evidence already recorded and do not wish to adduce any further evidence in the civil Court. Such observation was followed by a very pertinent observation by that Division Bench to the effect:

We may add that nature of order required to be made by the Court would depen on the facts of each case, the stage at which the proceedings stood transferred to the civil Court and the prayer made by the parties in the civil Court in this behalf. The civil Court in all such cases will decide the matter on the basis of the the procedure applicable to the trail of a regular civil suit before it treating the entire record of the proceedings before the Rent Controlling Authority as a part of the record in the civil suit.

This decision permits the civil Court to pass such orders in the circumstances of a given case and in the light of the prayer made by the parties before it. The civil Court may also, therefore, permit the defedent to defend the regular civil suit before it though coming to it in terms of Section 9 of the M.P. Accommodation Control (Amendment) Act. 1985. The decision, in a way thus supports or at least does not run counter to the view which I have taken. I am, therefore, of the opinion that the civil Court on receipt of the application from the Rent Controlling Authority in accordance with Section 9 of the M. P. Accommodation Control (Amendment) Act, 1985 and taking it as a plaint has jurisdiction to permit the Defendant-tenant to defend the action for his eviction as he would ordinarily do in a regular civil suit. If in a given case, leave to defend was earlier not granted or refused by the Rent Controlling Authority u/s 23-C of the M. P. Accommodation Control Act before the application stood transferred to civil Court u/s 9 of the M. P. Accommodation Control (Amendment) Act, 1985. the Civil Court shall further permit tenant/Defendant to defend the suit in the manner provided in the Code of CPC and in accordance with Chapter III of the M. P. Accommodation Control

Act. In this view of the matter, the question arising in this appeal, as stated above, must be answered in favour of the Appellant and against the Respondent Plaintiff. Consequently, this appeal must be allowed.

The appeal is allowed and the judgments and decrees of the Courts below are hereby set aside. The matter is sent back to the trial Court which shall in the circumstances of this case, permit the Appellant to file written statement, as he would have done had the action been initiated only in the civil Court by filing a plaint. If the written statement is not already filed, the same may be permitted to be filed now. Thereafter, the suit shall be tried in accordance with law as indicated above. Since the matter has already been delayed, the trial Court shall take care to expedite the hearing of the case. The parties shall bear their own costs as incurred.