
(2003) 12 MP CK 0004
In the Madhya Pradesh High Court
Case No : Second Appeal No. 31 of 1996

Bal Chand Jain

APPELLANT

Vs

Sawai Singhai Niarmal Chand Jain

RESPONDENT

Date of Decision : 09-12-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1),
12(1)(3), 12(1)(a), 12(1)(a)(g)(k), 12(1)(g)

Citation : (2004) 3 MPLJ 94

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : None, for the Appellant; P.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Pande, J.

Being aggrieved by the judgment-decree dated 29-11-1995, passed by IX ADJ, Jabalpur on C.A. No. 71-A/95, affirming the judgment decree dated 30-11-1994 passed by XIV Civil Judge Class II, Jabalpur in C. S. No. 114-A/94, defendant/appellant has preferred this appeal u/s 100 Civil Procedure Code.

The appeal has been admitted on the following substantial questions of law :-

(1) Whether in view of the judgment passed by a single Judge of this court in the case of Lacchobai Rathor v. Madan Mohan Ji reported in 1988 JIJ 213, the appellant could claim that he is entitled to move an application u/s 13(5) of the M. P. Accommodation Control Act, 1961 before this Court even prior to admission of second appeal?

(2) Whether the appellant is entitled to benefit of section 13(5) of M. P. Accommodation Control Act, 1961 under the facts and circumstances pleaded by him in LA. No. 1561 of 1996?

(3) Whether the lower appellate Court was right in confirming the decree passed by the trial Court u/s 12(1)(g) of the M. P. Accommodation Control Act, 1961 when it directed u/s 12(1)(k) of the Act to the appellant, to repair the building for damage caused by him within two months in order to escape the effect of a decree u/s 12(1)(k) of the Act?

(4) Whether a decree u/s 12(1)(g) of M. P. Accommodation Control Act, 1961 could be passed by the Court-below under the facts and circumstances of the case without proper proof that the suit accommodation had become unfit for human habitation?

(5) Whether the Court-below was right in passing the decree u/s 12(1)(3) of the M. P. Accommodation Control Act, 1961?

Defendant/appellant is a tenant of the plaintiff/respondent in the suit house on a monthly rent of Rs. 10/- p.m. He did not pay arrears of rent from February 1990. Further, a substantial damage has been caused by him to the suit house and that the suit house being old in a dilapidated condition has become unfit for human residence, therefore, servicing a notice to quit the plaintiff/respondent instituted C. S.No. 114-A/94 in the Court of XIV Civil Judge Class II seeking eviction u/s 12(1)(a)(g)(k) of the M. P. Accommodation Control Act. Plaintiff/appellant resisted the suit stating inter alia that he is not in arrears of rent and no substantial damage has been caused by him to the accommodation and the accommodation is not unfit for human residence. The Civil Judge in C. S. No. 114-A/94 vide judgment dated 30-11-1994 held that defendant/appellant remained in arrears of rent and did not pay in spite of service on demand notice and the suit house being old dilapidated is unfit for human residence. Further a substantial damage has been caused by the defendant/appellant to the accommodation. Accordingly, C. S. No. 114-V94 for eviction has been decreed. Being aggrieved, the defendant/appellant preferred C.S. No. 71-A/95 before the IX ADJ, Jabalpur. Affirming the aforesaid findings recorded by Civil Judge the Court below dismissed the appeal vide impugned judgment dated 29-11-1995.

Defendant/appellant depositing arrears of rent filed an application LA. No. 151/96 seeking condonation of delay u/s 13(5) of the M. P. Accommodation Control Act. Learned counsel for the plaintiff/respondent submitted that with reference to *Gulaba v. Rajnath* 1997 (2) MPWN 121 by depositing entire rent in second appeal the defendant/appellant is not entitled to seek benefit u/s 13(5) as the payment has not been made in compliance of section 13(1). In *Lacchobai Rathor v. Madan Mohan Ji*, 1988 J.L.J. 213 it has been held that a conjoint reading of sub-sections (1), (5) and (6) of section 13 and section 12(3), is clearly manifestoes of legislative intent that if a tenant sued u/s 12(1)(a) made deposit of payment of rent, due payable by him, at any time, with the leave of the trial or appellate Court, his eviction cannot be ordered by such a Court as also by an executing Court. That indeed is the inexorable mandate of section 13(5).

As has been held in *Lacchobai Rathor v. Madan Mohan Ji* (supra) the defendant/

appellant on condonation of delay may avail benefit u/s 13(5). A Notice (exhibit P-2) dated 19-3-1990 directing the defendant appellant to make payment of arrears of rent has been sent vide registered post AD. This notice has been received by the defendant/appellant on 14-3-1990 vide acknowledge exhibit P-4. He did not pay the rent immediately and even after the service of writ of summons in C. S. No. 114-A/94. He did not pay monthly rent at the rate of Rs. 10/- per month regularly even during the pendency of suit C. S. 114-A/94 and C. S. No. 71-A/5. D. W.-1 Pradeep Kumar Jain in cross-examination in para 8 has admitted that the rent for the period 8 to 10 years is to be paid by him to the landlord. This is case of gross negligence, disobedience of provision of law requiring deposit of rent by a tenant. The rent amount being Rs. 10/- p.m. could have easily been paid on demand and during the pendency of suit-appeal before the Court below. In the circumstances, the default on the part of defendant/appellant cannot be condoned and he is entitled to seek protection u/s 13(5).

P. W.-1 Nirmal Chand Jain has stated that the suit house is made of mud and tiles (kabeloo). This being very old may fall any time. A portion of the suit house has fallen. The photograph of the suit house is Article-1. The same is the statement of P.W. -2 Alok Kumar Jain that the suit house is about 100 years old made of mud and tiles and may fall any time. The suit house has been inspected by an engineer and has stated its reconstruction-renovation cannot be done unless it is being vacated. Even D. W. -1 Pradeep Kumar Jain in para 13 has admitted that a portion of wall part of suit house has fallen in the past. Article A photograph clearly shows that the suit house is too old and may collapse any time. Therefore, it has become unsafe-unfit for human habitation and is required bona fide for carrying out repairs which cannot be carried out without it being vacated.

P. W. -2 Alok Kumar Jain has stated that a substantial damage has been caused to the accommodation by the defendant/appellant. A complaint to the Municipal Corporation has been made and a suit has been instituted by his grandfather. D. W. -1 Pradeep Kumar Jain in cross-examination para 2 admits that alteration repairs has been made in the suit house. Complaining the act aforesaid, the landlord instituted a suit on the ground that the repair-alterations were made without his permission. Therefore, statement of P. W. -2 Alok Kumar Jain has rightly been believed that a substantial damage has been caused by the defendant/appellant to the accommodation. The Civil Judge while decreeing the suit vide judgment dated 30-11-1994 u/s 12(1) directed the defendant/appellant to remove the unauthorised construction within a period of two months time. The direction aforesaid has not been complied with by the defendant/appellant. Even otherwise the suit deserves to be decreed u/s 12(1)(g). Therefore, removal of unauthorised construction inside of the suit house would make it otherwise. The Courts below rightly held the ground of eviction u/s 12(1)(a), (g), (k) have been proved. Therefore, the plaintiff/ respondent is entitled to a decree of eviction. The aforesaid concurrent findings of fact are neither perverse nor illegal.

Consequently, affirming the judgment-decree passed by Courts below, the appeal

fails and is dismissed. Appellant shall bear his cost and pay the cost of the respondent. Counsel fee as per rule or certificate (whichever is less).