

(1996) 05 MP CK 0047
In the Madhya Pradesh High Court
Case No : Civil Rev. No. 1319 of 1995

Bhagwandas Pawaiya

APPELLANT

Vs

Kailash Narayan and Bros. (Firm)

RESPONDENT

Date of Decision : 14-05-1996

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 13(5)

Citation : (1997) 1 MPLJ 272

Hon'ble Judges : A.S. Tripathi, J

Bench : Single Bench

Advocate : K.K. Lahoti, for the Appellant; K.N. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Tripathi, J.

This revision has been preferred against the order dated 6-12-1995 passed by the Third Civil Judge Class II, Gwalior in the Execution Case No. 2-A/78 x 95 whereby an objection under Order 21, Rule 23, CPC read with section 47, CPC filed by the petitioner was rejected.

The decree for eviction against the petitioner was passed in favour of the respondent and it became final upto the Apex Court. During the execution of the decree for eviction of the petitioner, it was alleged by the petitioner-judgment-debtor that he was given two months time to vacate the premises. The execution proceedings were started on 18-2-1995 and eviction warrant was issued against the petitioner. The petitioner filed an objection that the respondent firm in whose favour the decree was passed has been dissolved and as such decree could not be executed. The judgment-debtor/petitioner further alleged that now he has deposited the entire rent in the execution proceedings and the decree could not be executed for eviction against him which was passed on the ground of default.

As regards the first question raised by the petitioner that since the firm has been dissolved the decree for eviction could not be executed, it is enough to say that

the decree stands in favour of the respondent for eviction against the tenant/petitioner. The decree had become final upto the Apex Court and during execution proceedings even if the firm said to have been dissolved which has been denied does not make any difference and the decree for eviction can very well be executed. This point was given up during arguments.

Learned counsel for the petitioner pressed only one point that the petitioner has deposited the entire rent now in the execution proceedings and therefore the decree against him which was passed on the ground of default could not be executed. The reference was made to the provisions of section 13(5) of the M. P. Accommodation Control Act. Sub-section (5) of section 13 of the said Act is quoted below :

"If a tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no decree or order shall be made by the court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord."

This sub-section provides an opportunity to the tenant to deposit the rent before a decree is passed. Once the decree is passed and becomes final, the provisions of sub-section (5) of section 13 of the Act could not be invoked to save the eviction by the tenant.

Reliance was placed on the case of Chandra Shekhar v. Krishandas, 1987 MPLJ 120, 1986(2) MPWN 269 and SN 190. In that case the High Court held that the provisions of sub-sections (1) and (5) of section 13 can be made applicable in the execution proceedings. In the case of Lacchobai v. Madan Mohanji, 1988 MPLJ 213, it was held thus :

"A conjoint reading of sub-sections (1), (5) and (6) of section 13 and section 12(3), is clearly manifestive of legislative intent that if a tenant sued u/s 12(1) (a) made deposit for 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."

This case also lay down the law that during the pendency of the proceedings even upto the Apex Court if the rent is deposited then the provisions of sub-section (5) of section 13 come into play but if no rent is deposited during the proceedings and the decree becomes final upto the Apex Court, the scope of sub-section (5) of section 13 could not be extended for permitting the tenant to deposit the arrears of rent in the execution proceedings and to make the decree unexecutable. Stretching the provisions of sub-section (5) of section 13 to this extent will defeat the other provisions of this section 13. The scope of section 13(5) is limited to the extent of giving an opportunity to the tenant to deposit the entire arrears of rent to save his eviction only during the pendency of the proceedings even upto the Apex Court. But once the decree becomes final, the scope of section 13(5) cannot be extended to allow the judgment debtor to

deposit the rent in the execution proceedings to make the decree unexecutable. This is not permissible under the law as sub-section (5) of section 13 itself limits the scope of this benefit given to the tenant till passing of the decree. Passing of the decree may be extended even upto the Apex Court. But once the decree is passed and it becomes final and execution proceedings are started, the scope of section 13(5) ends and the decree could not be extended in the execution proceedings to enable the tenant to deposit the arrears of rent decreed. Thus, in this case when the decree became final upto the Apex Court, the petitioner could deposit the rent during the proceedings before it became final in the Apex Court. Once it has become final and the execution proceedings have been started, the provisions of sub-section (5) of section 13 do not come into play and the contention of the petitioner on that point in this revision has no legs to stand. This view finds support from the cases of Ram Murti Vs. Bhola Nath and Another, and Ganpat v. Shashikant, AIR 1978 SC 955.

In view of the discussions made above, the revision has no merit and the same is dismissed. No order as to costs.