
(2002) 10 MP CK 0013
In the Madhya Pradesh High Court
Case No : S.A. No. 395 of 1988 (J)

Burhanpur Municipal Corporation

APPELLANT

Vs

Ikbal Hussain

RESPONDENT

Date of Decision : 03-10-2002

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1), 3

Citation : (2003) 2 MPJR 41

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : V.P. Verma, for the Appellant; S.K. Dubey, for the Respondent

Judgement

K.K. Lahoti, J.

Plaintiff has filed the present appeal aggrieved by judgment and decree in appeal by which the suit was dismissed.

This appeal was admitted on 21.11.1988 on following substantial questions of law:

1. Whether in view of the provisions contained in Section 3 of the M.P. Accommodation Control Act, 1961 the provisions of the said Act did not apply to the suit accommodation and as such the plaintiff-appellant was not required to make out the ground under sub-sec. (1) of Section 12 of the Act for evicting the defendant from the said accommodation?

Whether in the facts and circumstances of the case, the first appellate Court erred in law in finding that the notice given by the plaintiff-appellant to the defendant-respondent did not have the effect of terminating his tenancy in respect of the suit accommodation?

So far as substantial question of law no. 1 is concerned, there is no dispute that the suit accommodation is a non-residential and in view of Section 3 (1) (b) of the Madhya Pradesh Accommodation Control Act, 1961, (hereinafter referred to

as "the Act") provisions of the Act will not apply in the present case. In view of the aforesaid position, this substantial question of law is decided in favour of the appellant:

It is not in dispute that by notice dated 5.1.1984 (Ex.P/2), appellant has terminated the tenancy of respondent with effect from 16.1.1984 but vide subsequent notice (Ex. D/18) dated 28.2.1984 the appellant has asked enhanced rent from respondent as per revised enhanced rate. From the perusal of Ex. D/18, it appears that rent was enhanced from Rs. 92.50 to 102.36, which is apparent from receipts Ex. D/2 to Ex. D/17. The appellant itself has accepted the enhanced rent after termination of the tenancy. This question has been considered by the Apex Court in the case of Bhuneshwar Prasad and Another Vs. United Commercial Bank and Others, whereas the Apex Court held in paras 5 and 7 as under:

5. The High Court has recorded the finding of fact that even after expiry of the period of lease, rent of the premises at the increased rate as per request of the plaintiffs, was regularly deposited by the defendant in their Bank in the accounts of the plaintiffs which has been subsequently withdrawn by them. Admittedly, the rent under the lease for the period upto 31.3.1991 was Rs. 10,876 per month. The High court has further held that the plaintiffs asked that Bank as per their letter dated 5.9.1992 to deposit the rent of the premises at the increased rate and the Bank deposited rent at the enhanced rate which amount was withdrawn by the plaintiffs. The amount being deposited by the Bank after 31.3.1991 was at the rate of Rs. 13, 595 per month. The High Court has held that "it is admitted position that the plaintiffs accepted 25% increased amount of monthly rent of the premises in question which is evident from Exts. B-3 and B-4. "The question to be considered, therefore, is as to the effect of payment of enhanced rent by the Bank to the owners. Does it create or not a fresh tenancy from month to month within the meaning of Section 116 of the Transfer of Property Act. Learned counsel for the appellants contends that mere acceptance of rent does not create a tenancy from month to month because of the protection from eviction available to the Bank under the provisions of the Act.

Mr. Sanyal, learned Senior Counsel appearing for the appellants contends that Section 116 of the Transfer of Property Act would not be attracted merely on acceptance of rent. Reliance is placed upon a decision of the Federal Court in Kai Khushroo Bezonjee Capadia Vs. Bai Jerbai Hirjibhoy Warden. We agree that to bring a new tenancy into existence within the meaning of Section 116, there should be an agreement as the section contemplates that on one side, there should be an offer of taking of fresh demise evidenced by the lessee's continuing occupation of the property after the expiry of the lease and on the other side, there must be a definite assent to this continuance of possession by the lessor/ landlord and that such an assent of the landlord cannot be assumed in cases of tenancies to which the Rent Restriction Acts apply on account of the immunity from eviction which a tenant enjoys even after the expiry of lease. In such cases,

the landlord cannot eject him except on specified grounds mentioned in the Rent Restriction Acts and thus the acceptance of rent by the landlord from statutory tenant, whose lease has already expired would not be taken as evidence of a new agreement of tenancy and it would not be open to such a tenant to urge that by acceptance of rent, a fresh tenancy was created. We do not expect a lessor not to accept the rent, when, in view of the protection granted by the rent restriction laws, without existence of one or the other ground, he is precluded from seeking eviction of the lessee and in such a case, there would be no question of creation of tenancy from month to month. Under these circumstances, mere acceptance of amount equivalent to rent or the standard rent would not attract Section 116. Assent to the lessee continuing in possession would be absent in such cases. However, an agreement creating fresh tenancy within the meaning of Section 116 can be implied from the conduct of the parties. In *Ganga Dutt Murarka v. Kartik Chandra Das* while affirming the dictum laid down in *Khushroo* case it was held that apart from an express contract, conduct of the parties may undoubtedly justify an inference that after determination of the contractual tenancy, the landlord had entered into a fresh contract with the tenant, but whether the conduct justified such an inference must always depend upon the facts of each case. In *Bhawanji Lakhamshi v. Himatlal Jamnadas Dani* again the question that came up for consideration was as to whether a fresh tenancy was created or not by acceptance of rent by the lessor after the termination of the tenancy by the efflux of time. This Court declined the prayer to reconsider *Ganga Dutt Murarka* case and held that acceptance by the landlord from the tenant after the contractual tenancy had expired, of amounts equivalent to rent or an amount which was fixed as standard rent did not amount to acceptance of rent from a lessee within the meaning of Section 116 of the Transfer of Property Act. The present is not a case of acceptance of amounts equivalent to rent or amounts fixed as standard rent but acceptance of increased rent. It was also observed that: (SCC p. 394, para 13).

We do not say that the operation of Section 116 is always excluded whatever might be the circumstances under which the tenant pays the rent and the landlord accepts it.

The whole basis of Section 116 is that a landlord is entitled to file a suit for ejectment and obtain a decree for possession and, therefore his acceptance of rent after expiry of lease is an unequivocal act referable to his desire to assent to the tenant continuing possession. It would be absent in cases where there are restrictions as contemplated by rent laws. In such cases therefore, it is for the tenant where it is said that the landlord accepted the rent not as a statutory tenant but only as a legal tenant indicating his assent to the tenant's continuing possession, to establish it.

In view of the aforesaid, as the appellant itself has accepted enhanced rent after issuance of Ex. P/2 and by offering respondent to pay enhanced rent vide Ex. D/18, the appellant has waived the notice and by enhancement of rent the

tenancy of the respondent continued. In view of the aforesaid, the learned lower appellate Court has rightly dismissed the suit of the appellant for eviction. I do not find any merit in this appeal. Consequently this appeal is dismissed. However, it is directed that appellant will be entitled to recover the rent from respondent as agreed by him. With this observation, this appeal is finally disposed of.