

(2010) 06 MP CK 0028
In the Madhya Pradesh High Court
Case No : S.A. No. 609 of 2008

Dariyav Singh through L.Rs. Raj Kumar Singh	APPELLANT
Vs	
Agro Industrial Company	RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

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

Citation : (2010) 06 MP CK 0028

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Mody, J.

Appellants by Mr. M.I. Khan, advocate.

Respondent by Mr. G.M. Agrawal, advocate.

Arguments heard finally, judgment dictated in Open Court.

1. Being aggrieved by the judgment and decree dated 16-5-2008 passed by I ADJ, Barwani in Civil Suit No. 24-A/2005 whereby the suit filed by the Respondent for eviction against the Appellants u/s 12(1)(a) and (c) of M.P. Accommodation Control Act (which shall be referred hereinafter as "Act") was dismissed, was set aside, the present appeal has been filed.

2. This appeal was admitted by this Court for final hearing vide order dated 28-10-2009 on the following substantial questions of law:

(1) Whether the first Appellate Court was justified while reversing the judgment and decree passed by the trial Court, which had dismissed the suit holding that no ground is made out u/s 12(1)(a) - arrears of rent or ground u/s 12(1)(c) - denial of title ?

(2) Whether the first Appellate Court was justified in holding that the ground u/s 12(1)(a) of the M. P. Accommodation Control Act is made out without examining the impact of Section 12(3) of the Act?

(3) Whether the first Appellate Court was justified on the facts pleaded and found proved that ground u/s 12(1)(c) of the Act is made out ?

(4) Whether the findings recorded by the lower Appellate Court that ground u/s 12(1)(e) ibid of the M. P. Accommodation Control Act is in conformity with the requirement law laid down by Supreme Court?

3. Short facts of the case are that suit for eviction was filed by the Respondent on 10-9-1996 against the predecessor-in-title of Appellant/ Daryaosingh s/o Sawantsingh alleging that the Respondent is the Company registered under the provisions of Companies Act. It was alleged that the house in question is situated at Barwani in which Appellants are tenants @ Rs. 15/- per month. It was alleged that Appellants are in arrears of rent w.e.f. 1-9-1988 which has not been paid in spite of notice of demand which was duly served. It was alleged that predecessor-in-title of Appellants upon asking for eviction denies the title of Respondent and claimed himself as owner of suit accommodation. It was alleged that in that regard a suit was also filed by the Appellants which was numbered as 32-A/1991 and was dismissed on 18-4-1996. It was also alleged that Respondent requires the suit accommodation for the residence of its employees bona fide. It was prayed that decree of eviction be passed u/s 12(1)(a), (c) and (e) of the Act.

4. The suit was contested by the Appellants by filing written statement wherein the tenancy was not disputed, however, it was alleged that Respondent entered into an agreement to sale the suit accommodation through power of attorney for a consideration of Rs. 1,500/-. It was alleged that suit for specific performance has been filed against the Respondent. It was prayed that suit be dismissed. After framing of issues and recording of evidence suit of the Respondent was dismissed by the learned trial Court against which an appeal was filed which was allowed and decree of eviction was passed in favour of Respondent u/s 12(1)(a) and (c) of the Act, hence this appeal.

4A. Learned Counsel for the Appellants argued at length and submit that the impugned judgment and decree passed by learned Appellate Court is illegal, incorrect and deserves to be set aside. It is submitted that the entire rent has already been deposited by the Appellants, therefore, no decree of eviction against the Appellants u/s 12(1)(a) of the Act could have been passed. So far as Section 12(1)(c) of the Act is concerned, learned Counsel for the Appellants submit that Appellants never denied the ownership of the Respondent, on the contrary Appellants filed the suit against the Respondent for specific performance which goes to show that Appellants have admitted the Respondent as owner of the suit accommodation. It is submitted that in the facts and circumstances of the case appeal filed by the Appellants be allowed and the impugned judgment passed by learned Appellate Court whereby decree of eviction has been passed

be set aside.

5. Mr. G. M. Agrawal, learned Counsel for the Respondent submits undisputedly the Appellants are tenant and not deposited the rent even after filing of the suit. It is submitted that Appellants have failed to deposit the rent, therefore, even if at the appellate stage Appellants have deposited the rent, then too, no benefit can be given to the Appellants and Respondent is entitled for decree of eviction u/s 12(1)(a) of the Act. For this contention reliance is placed on a decision in the matter of Rajendra Kumar and Others Vs. Smt. Kasturi Bai and Others, wherein tenant has not deposited the rent month by month and also not moving the application for condonation of delay, this Court has held that the suit for eviction was rightly decreed. So far as decree of eviction u/s 12(1)(c) of the Act is concerned, learned Counsel submits that predecessor-in-title of the Appellants filed a suit for specific performance alleging that the Respondent has entered into agreement to sale the suit accommodation. It is submitted that the suit was contested by the Respondent and the same was dismissed by the trial Court which was maintained upto this Court. It is submitted that the Act of Appellants is adversely affecting the interest of Respondent, therefore, learned Courts below has rightly passed the decree against the Appellants u/s 12(1)(c) of the Act. For this contention reliance is placed on a decision in the matter of Smt. Saroja v. Supersonic Plastic Pvt. Ltd. 2009 (1) M.P.A.C.J. 146 wherein this Court has held that the act of tenant in claiming an agreement to sell in his favour and failed to prove itself adversely affects the interest of landlord. It is submitted that the appeal filed by the Appellants be dismissed.

6. After taking into consideration all the facts and circumstances of the case, this Court is of the opinion that no illegality has been committed by learned Appellate Court in decreeing the suit against the Appellants u/s 12(1)(a) and (c) of the Act. This Court is also of the opinion that by depositing the rent before this Court the ground which is made out u/s 12(1)(a) of the Act is not wiped out and Appellants are liable to be evicted u/s 12(1)(a) of the Act. In view of this, the appeal filed by the Appellants has no merits and is hereby dismissed. Since the Appellants are in occupation of accommodation, therefore, to save the Appellants from the peril of eviction, it is made clear that the decree passed by learned Appellate Court against the Appellants shall not be executable for a period of one year, provided that Appellants furnishes an undertaking on affidavit within a period of four weeks to the effect that Appellants shall vacate the suit accommodation on or before 30-6-2011 and shall also comply with the money part of the decree within the said period as mentioned above and shall deposit the current rent as per law, failing which the decree shall be executable forthwith. No order as to costs.