

(1960) 08 MP CK 0024
In the Madhya Pradesh High Court
Case No : C.R. No. 124 of 1960

Dharam Chand

APPELLANT

Vs

Rajendra Kumar Todermal and others

RESPONDENT

Date of Decision : 12-08-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Madhya Pradesh Extension of Laws Act, 1958 — Section 6

Citation : (1960) J LJ 1141 : (1960) MPLJ 1136

Hon'ble Judges : P.V. Dixit, C.J

Bench : Single Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; G.C. Jain and B.L. Chouksey, for the Respondent

Judgement

P.V. Dixit, C.J.

This is a petition to revise an order of Civil Judge, Class II. Murwara, u/s 5 of the Madhya Pradesh Accommodation Control Act, 1955, directing the Petitioner-tenants to deposit Rs. 40 per month as rent from the date of the institution of the suit till 31st December 1959.

In this petition the contention of the applicant is that the opponents' suit was instituted before 1st January 1959, that is to say, before the coming into force of the M. P. Accommodation Control Act, and that Section 5 could not be applied retrospectively to suits filed before that date. Learned Counsel for the applicant placed reliance on Prabhudayal v. Suprabhadevi 1956 M L R (Civil) 618 : 1956 M BLJ 390.

The Madhya Bharat Accommodation Control Act, which was extended to the whole of Madhya Pradesh by Madhya Pradesh Extension of Laws Act, 1958, with some modifications and became operative from 1st January 1959 as Madhya Pradesh Accommodation Control Act, 1955, came into force in the territory of the former State of Madhya Bharat on 30th September 1955. After the coming into

force of that Act in Madhya Bharat, in many cases the question was raised in Madhya Bharat whether Section 5 applied to suits instituted in Madhya Bharat before 30th September 1955. One of those cases came up before me as a Judge of the Madhya Bharat High Court and it was held by me in *Prabhudayal v. Suprabhadevi* (1) that the provision did not apply to suits filed before the enforcement of the Act or to appeals arising out of such suits. This conclusion was based on the reasoning that provisions which touch a right in existence at the passing of the statute cannot be applied retrospectively in the absence of express enactment or necessary intendment; that a statute which relates to procedure, if it interferes with vested rights, is subject to the general rule against retrospective operation; that such a statute even though it relates to procedure and presumptively is entitled to retrospective effect cannot be permitted to cut off existing rights unless it expressly or by necessary implication takes away or impairs the rights; that the right of defence to an action is as much a substantive right as the right to maintain the action itself; that Section 5, which enjoined upon the Court to make an order for the deposit of rent on a request being made by the landlord and provided that on the failure of the tenant to deposit the rent his defence shall be struck off, made the Defendant's right of defence onerous and stringent, and fettered it by conditions which did not exist at the time of the filing of the suit for the making of a defence; that, therefore, Section 5 touched a vested right and that Section 5 could not, therefore, be given a retrospective operation in the absence of an express provision or necessary intendment. Indeed, now Section 6 of the Madhya Pradesh Extension of Laws Act, 1958, specifically preserves such a vested right. I do not propose to repeat all what I have said in *Prabhudayal's* case (1).

Learned Counsel for the opponents was not able to point out any flaw or fallacy in the reasoning given in *Prabhudayal's* case (1) to persuade me to revise my opinion expressed therein. He, however, urged that the revision petition was not competent as the order made by the learned Civil Judge was one within his jurisdiction and as yet no order terminating the Petitioner's right to defend has been passed. If, as I think, u/s 5 an order for deposit of rent cannot be made in a suit instituted before the 1st January 1959 in regions in which the Madhya Bharat Accommodation Control Act, 1955, was not in force, then it is plain that the order made by the learned Civil Judge directing the Petitioner to deposit the rent amount was wholly illegal. The order with regard to the deposit of rent is, therefore, vitiated by a material illegality. It is true that no order about the striking off of the defence has been made but that cannot preclude the Petitioner from moving this Court u/s 115 of the CPC when an order with regard to the deposit of rent has actually been made.

For these reasons I am of the opinion that in those regions of Madhya Pradesh where the Madhya Bharat Accommodation Control Act, 1955, was not in force before the 1st January 1959, an order u/s 5 of the M. P. Accommodation Control Act, 1955, cannot be made in suits instituted before the 1st January 1959. The result is that the order dated 12th January 1960 of the Civil Judge, Class II,

Murwara, directing the Petitioner to deposit the amount of rent is set aside. In the circumstances of the case, I leave the parties to bear their own costs.