
(1989) 03 MP CK 0029
In the Madhya Pradesh High Court
Case No : M.P. No. 500 of 1989

Gopaldas

APPELLANT

Vs

District Judge, Indore and Others

RESPONDENT

Date of Decision : 30-03-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 24
Constitution of India, 1950 — Article 226, 227
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 23A

Citation : AIR 1990 MP 279 : (1991) 36 MPLJ 609 : (1991) MPLJ 609

Hon'ble Judges : S.K. Dubey, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : R.G. Waghmare, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

The petitioner-tenant aggrieved of the order (Annexure I) dt. 20-1-89 passed by the District Judge, Indore, on an application under Sections 24 and 151 of the Code of Civil Procedure, whereby Civil Suit No. 83-A of 1987 was ordered to be transferred from the Court of 7th Civil Judge Class-II, Indore to the Court of the Rent Controlling Authority, Indore (hereinafter referred to as "the Authority"), has preferred this petition under Arts. 226 and 227 of the Constitution of India.

The material facts leading to this petition are that respondent No. 3, a widow, filed an application on 24-6-85 before the Authority u/s 23-A(b) of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter referred to as "the Act"), for getting eviction against the petitioner-tenant for the accommodation let for non-residential purpose as the same is required "bona fide" by respondent No. 3 for the purpose of starting business by herself and her major son. On summons, the petitioner applied u/s 23-C of the Act for obtaining leave to defend, which was granted to the petitioner. The petitioner filed an application challenging the jurisdiction of the Rent Controlling Authority. The Authority, after hearing the

parties, passed an order dt. 14-8-"87 holding that the requirement of the landlady is not urgent u/s 23(3) of the Act and ordered transfer of the case to the Civil Court as the Authority had no jurisdiction to try and entertain the application. Accordingly, the suit was transferred to the Court of the 7th Civil Judge, Class-II, Indore, which was registered as Civil Suit No. 83-A of 1987. In between, the landlady, aggrieved of the order dated 14-8-87 passed by the Authority, preferred a revision u/s 23-E of the Act before this Court. Vide Order Annex. E dated 31-8-87 passed in Civil Revision No. 269 of 1987, this Court set aside the order of the Authority and remitted the case to the Authority for disposal according to law, After this order, the learned Civil Judge, instead of transferring the matter to the Authority or directing the plaintiff to seek appropriate steps for transfer of the suit to the Authority, dismissed the suit holding that in view of the order of this Court in revision, the suit cannot proceed in the Civil Court. Hence, the suit was dismissed as the Civil Court has no power or authority to transfer the same to the Authority. The landlady preferred an application u/s 24 read with Section 151 of the CPC for transfer of the case to the Authority. That application was opposed by the petitioner. The learned District Judge allowed the application and ordered that as the order of the Civil Judge is a nullity in view of the order of the High Court, the Civil Court was having no jurisdiction to pass any order dismissing the suit and the appropriate course, at worst, was to return the plaint for presentation in the proper Court or to sent the record of the case to the Court of District Judge for being returned to the Authority. Hence, the District Judge allowed the application and the record of the case, which was pending before the Civil Court in view of the order of this Court, was ordered to be returned to the Authority through the office of the District Judge. It is this order, which has been challenged by the petitioner in this petition under Article 227 of the Constitution of India.

Shri R. G. Washmare, learned Counsel for the petitioner, made an assiduous effort to convince this Court for admission of the petition and for exercising the supervisory jurisdiction under Article 227 of the Constitution contending that when the suit was dismissed by the Civil Judge, no suit or proceeding was pending before the Civil Judge. Hence, power u/s 24, C.P.C. for transfer of the case from the office of the District Judge to the Court of the Authority could not have been exercised, after the dismissal of the suit, the proper remedy was to file an appeal and to get the dismissal of the suit set aside and then only the suit could have been transferred from the Civil Court to the Authority. The District Judge has transgressed his jurisdiction while exercising the powers u/s 24, C.P.C., thus, the impugned order deserves to be quashed. Learned Counsel placed reliance on a case of the Division Bench of this Court in AIR 1937 381 (Nagpur) and a Division Bench case of the Allahabad High Court in Mathura Prasad v. Ramcharanlal AIR 1915 All 2.

After hearing the Counsel, we are of the opinion that this petition has no merit and deserves to be dismissed summarily without notice to the other side, for the following reasons. It is apparent that after setting aside the order of the

Authority by this Court in revision, the case which was transferred to the Civil Court, was to be tried and disposed of by the Authority in accordance with law. Therefore, the Civil Court was having no seisin of the case. In fact, after the order of this Court, the Civil Court ought to have returned the case to the Authority for proceeding with the case in accordance with law. In any case, if the Court was of the opinion that it had no power to transfer the case, either the Court should have directed the parties to take proper steps for transfer of the case or could have sent the record to the office of the District Judge for transmitting the same to the Authority. Instead of doing this, the Civil Court dismissed the suit when the Civil Court was having no jurisdiction to dismiss the same. Even if it is assumed that the Court was having no power to transfer the case and there was no option left but to dismiss the suit, the order of the trial Court cannot be sustained for want of jurisdiction as it is settled that an order or judgment rendered is vitiated due to want of jurisdiction, which has to be set aside. A right judgment or an order by a wrong Court is no judgment or order in the eye of law. After the order of this Court in revision, the case, though was pending in the Civil Court, but it would be deemed to be pending in the Court of the Authority and not in the Civil Court. Only a ministerial act was to be done through the office of the District Judge to transmit the record from the Court of the Civil Judge to the Court of the Authority. As no such steps were taken nor any opportunity was afforded to the parties to take proper steps, the Court committed a fault or mistake in dismissing the suit of the plaintiff and for this mistake or fault of the Court, a party cannot be made to suffer on a well-settled principle of "*actus curiae neminem gravabit*" (an act of Court shall prejudice no man). Bearing in mind this well-settled principle, the rights of the parties were to be determined by the Authority and not by the Civil Court as per the order of this Court in revision, and the rights so crystallised, the adjudication ought to have been in accordance with law; which having not been done and the suit having been dismissed wrongly, the District Judge rightly exercised the powers u/s 24 of the CPC for transmitting the record to the Authority, holding that the order passed by the Civil Court is a nullity.

Even otherwise, the matter has come to our notice. It is now settled that the power of superintendence conferred upon this Court by Article 227 of the Constitution is not confined to administrative superintendence only but includes the powers of judicial revision also. When any question of pure jurisdictional competence arises in any matter, it is not only competent, but pre-eminently desirable, for this Court, because of its constitutional duty of "superintendence envisaged under Article 227, to correct jurisdictional errors of the subordinate Court and under Article 227 of the Constitution, this Court is required to discharge its constitutional duties of superintending functions of "all Courts and Tribunals" within its territorial jurisdiction to ensure primarily that they do not transgress the respective jurisdictional limits prescribed by law in order that justice is administered in a smooth and orderly fashion. The power rather saddles the High Court with a duty to get the inferior "Courts and Tribunals" within their

bounds of their authority and to see that they do what their duty requires and they do it in a legal manner (see Waryam Singh and Another Vs. Amarnath and Another, and Nilkanth Prasad and Others Vs. State of Bihar, In exercising this duty, this Court has also power to act suo motu under Article 227 of the Constitution for discharging this duty. It is a case where the Civil Court has acted in grave dereliction of duty in not transmitting the case to the Authority even after the order of this Court in revision but the Civil Court dismissed the suit without having any jurisdiction to do so.

The Apex Court in the case of Nilkanth Prasad and Others Vs. State of Bihar, has held that where an Appellate Authority had ample revisional authority, the order of such authority would not be set aside under Article 227 (where such authority, on appeal, quashed a decision of an inferior authority, which was without jurisdiction, even though the appeal was incompetent). Even considering for a moment that the order of the District Judge is wrong and the power to transfer u/s 24 of the CPC or powers u/s 151, C.P.C. could not have been exercised as no suit was pending on the date of the application as the suit was dismissed on 1-10-1988, in that case too, in view of our findings recorded above that the Civil Court was having no jurisdiction at all to proceed with the case as after the order of this Court, the case would be deemed to be pending in the Court of the Authority. In such circumstances, it is not a fit case for exercising the extraordinary powers of this Court under Article 227 of the Constitution for quashing the order of the District Judge on this technical plea. In A.M. Allison Vs. B.L. Sen, AIR 1957 SC 227, the Apex Court held that proceedings by way of certiorari are not "of course" and the High Court can refuse to issue a writ of certiorari if it is satisfied that there has been no failure of justice. It is settled that if the effect of quashing an order would be to restore an order, which is void, it would not be an appropriate exercise of jurisdiction under Article 226 or 227 of the Constitution of India. The effect of quashing the order of the District Judge in the instant case would be to perpetrate void order of the Civil Court (See a Division Bench decision of this Court in Punjab Sikh Regular Motor Service, Bilaspur Vs. Union of India (UOI) and Others, Recently, this Court in Babusingh v. State of M.P. (Misc. Petn. No. 1348 of 1988 decided on 9-3-89 (reported in 1989 MPLJ 322) at Indore Bench) after placing reliance on the case of Punjab Sikh Regular Motor Service, Bilaspur Vs. Union of India (UOI) and Others, took the same view.

By the order of the District Judge, no injustice has been caused to the petitioner. The rights of the parties are yet to be determined by the Authority but in case a writ of certiorari is issued to quash the order of the District Judge, the petitioner would be successful in achieving the benefit of an order passed by the Civil Judge, who had no jurisdiction to pass such an order and whose order is void in law. Certainly, this Court would not be justified either under Article 226 or 227 of the Constitution of India to assist the petitioner in achieving such a goal. The authorities relied by the learned Counsel for the petitioner have no application in the present facts and circumstances of the case as in those cases, after an ex

parte decree, simultaneous steps were taken, i.e. an appeal was filed and an application to set aside the ex parte decree was also filed. The appeal was dismissed. Then this Court in AIR 1937 381 (Nagpur) held that the decree of the lower Court ceased to exist and the original Court was right in dismissing the application to set aside the ex parte decree, which is not the case here but on the other hand, the High Court, vide its order in revision, directed the Authority to proceed with the case in accordance with law. Therefore, the Civil Court was having no jurisdiction at all to pass any order in the matter.

In the result, the petition fails and is accordingly dismissed summarily, without notice to the other side.