
(1996) 03 MP CK 0018
In the Madhya Pradesh High Court
Case No : S.A. No. 73 of 1996 (J)

Hazi Musa Wali Mohammad	Vs	APPELLANT
Smt. Gogalbai		RESPONDENT

Date of Decision : 12-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(e),
12(1)(f)

Citation : (1998) 1 MPJR 102

Hon'ble Judges : S.C. Pandey, J

Bench : Single Bench

Advocate : Abhay Sapre, for the Appellant; Ravish Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.

This is an appeal filed by the defendants u/s 100 of the CPC (hereinafter the Code for short) against the judgment and decree dated 23.12.95 in Civil Appeal No. 9A/95, passed by Shri Arun Prakash Shrivastava, IInd Additional Judge to the Court of District Judge, East Nimar, Khandwa arising from the judgment and decree dated 25.4.95, passed by Civil Judge Class- II. Khandwa in C.S. No. 8A/1991.

The appellant/Firm is the tenant of the respondent No. 1 in respect of the suit house shown in Schedule - A of the plaint, situate in the city of Khandwa. It is claimed by the respondent No. 1 that she is the owner and the landlady of the suit house. The suit house was taken on rent from the father of the respondent No. 1 by the applicant/Firm. It is the case of the respondent No. 1 that the ground floor of the house was taken for business and the First floor of the house was taken for the purpose of residence. The agreed rate of rent for the entire house was Rs. 250/- per month. The tenancy was oral and it started from the first day of the English Calendar month and was liable to be terminated on the

last day of the month. It was claimed by the respondent No. 1 that the suit house was required by her for resident and also for starting Kirana business for her son Vinod Kumar as her son was un-employed and he wanted to reside at Khandwa for starting his business. She also claimed that she has no alternative accommodation in the town of Khandwa. It was further pleaded that the appellant had not paid her rent of Rs. 250/- for the month of February, 1991 and therefore she claimed the rent for that month. The allegations made in the plaint show that the respondent No. 1 claimed that she required the suit house bonafide u/s 12 (1) (e) & (f) of the M.P. Accommodation Control Act (hereinafter the Act for short) as there was composite need for resident as well as for business for her son.

The appellants admitted that they are the tenants of the suit house. They admitted that their father had taken the suit house on rent. They denied that the son of respondent No. 1 was unemployed. It was their specific case that he was Govt. Servant. They denied that the respondent No. 1 alone was the owner of the suit house and claimed that a gift made in favour of the respondent No. 1 was invalid. They also claimed that the respondent No. 1 could not file the suit for eviction as there were other co-owners of the suit house.

The trial Court found that the appellant is not liable to pay rent for the month of February 1992 to the respondent No. 1, who was held to be the landlady of the appellant as the rent has already been paid. However, it came to the conclusion that the need of the respondent No. 1 is bonafide and that the partners of the appellant/Firm are liable to be evicted. Accordingly a decree for eviction was passed by the trial Court with a direction that the appellant shall continue to pay Rs. 250/- per month till they are evicted in accordance with law.

Aggrieved by the order passed by the trial Court, the appellant/Firm filed an appeal through one of the Partners Idrish, the other partner Abdul Gaffar, was shown as a respondent in the appeal. The other partner Abdul Gaffar remained ex-parte in the Civil Appeal No. 9-A/95, and, therefore the appeal was prosecuted by the appellant/Firm only through Idrish. The lower appellate Court after hearing the parties, that is to say, the appellant and the respondent No. 1, dismissed the appeal and upheld the judgment and decree of the trial Court. Aggrieved by the impugned judgment and decree of the lower appellate Court, the appellant/Firm represented by Idrish has filed this appeal.

After hearing the learned counsel for the appellant this Court admitted the appeal on the following substantial question of law on 6.3.96 and the appeal was finally heard with the consent of the parties and is being disposed of as such:

Whether the Court-below rightly confirmed the findings of fact recorded by the trial Court, ignoring the material place of evidence on record.

The learned counsel for the appellant urged that the lower appellate Court while disposing of the appeal has not considered the real issues of the fact involved in the case. The issue of fact involved in the case was whether the appellant

bonafide required the suit house for the business and residence of her son Vinod Kumar as alleged by her. The grievance of the learned counsel for the appellant is that the Court below has not given its independent finding. The learned Judge of the lower appellate Court has observed in para-4 of his judgment that he does not feel necessary to interfere with the finding recorded by the trial Court in paragraphs 8 to 10 of its judgment. The counsel for the appellant urged that the first appellate Court was the final Court of fact and, therefore, it was necessary for the lower appellate Court to consider the finding recorded by the trial Court and indicate its reasons for agreeing with the finding of the trial Court. The lower appellate Court has simply observed that it is not necessary to interfere with the finding of fact recorded by the trial Court in paragraphs 8 to 12 of its judgment. According to the counsel for the appellant, the lower appellate Court could not have generally agreed with the finding recorded by the trial Court when the trial Court has itself omitted to consider certain vital matters in the evidence of the parties and it come to wrong conclusion that the requirement of respondent No. 1 is bonafide. In the submission of the learned counsel for the appellant, this Court was not entitled to interfere with a finding of fact recorded by the lower appellate Court, but under the facts and circumstances of the case when the trial Court itself has omitted to consider vital evidence of the parties, this Court should remand the case as there was substantial defect in the procedure entitling this Court to interfere with the judgment of the lower appellate Court.

The learned counsel for the respondent No. 1, on the other hand, submitted that it is well established that in view of the Supreme Court's decision reported in *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, that the lower appellate Court was not bound to repeat the reasons given by the trial Court when the lower appellate Court agreed with the finding of the trial Court and the reasons given by the trial Court for it. It was further submitted by the counsel for the respondents that the counsel for the appellant is not entirely accurate in submitting that the lower appellate Court has not given its independent reason for coming in the conclusion that the bona fide need of the respondent No. 1 in respect of the suit house is proved. The learned counsel for the respondent No. 1 pointed out that in paragraphs 4 and 5 itself the lower appellate Court has discussed the bonafide need of the respondent No. 1. According to the learned counsel for the respondent No. 1 this Court should not interfere with the finding recorded by the lower appellate Court and should dismiss the appeal.

The only question that requires to be considered by this Court is whether the learned Judge of the lower appellate Court has ignored the material piece of evidence on record. Before this Court gives the final conclusion, it is necessary to make certain general remarks regarding how the first appellate Court should deal with the finding recorded by the trial Court. It appears to this Court that the lower appellate Court was bound to consider the entire evidence on record and should not have disposed of the case in the manner it has done. It is the duty of the final Court of fact to go through the evidence on record and indicate briefly, if necessary, if it agrees with the finding of the trial Court so that it is not

necessary at the second appeal stage to find out whether there was sufficient reason for agreeing with the finding of the trial Court as observed by the lower appellate Court. This approach is not proper. The learned Judge of the lower appellate Court should have indicated his conclusion independently. No doubt the Supreme Court has observed that the lower appellate Court is not bound to give its reasons, but those observations were made in respect of findings recorded by the High Court and the Supreme Court considering that case Girijanandini's case (supra) has made the observation in para - 12 to the following effects.

We are unable to hold that the learned Judges of the High Court did not, as is contended before us, consider the evidence. It is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the Trial Court. Expression of General agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice.

It is very difficult to agree with the learned counsel for the respondent No. 1 that the observations made by the lower appellate Court in para 4 of its judgment that it is not necessary to interfere with the finding of fact so that he has considered the finding recorded by the trial Court in the light of evidence led by the parties. The learned Judge of the lower appellate Court should not have given such a general finding. He should have applied his mind to the facts of the case. This observation, made by the learned lower appellate Court, has entitled the counsel for the appellant to urge that the trial Court itself has omitted vital matters and, therefore, the reasoning given by the lower appellate Court is incorrect.

However, the question still remains to be decided whether in fact, the trial Court has really omitted to consider the vital matters while recording a finding against the appellant. I have gone through the finding recorded by the trial Court from paragraphs X to 12 and find that there is a detailed discussion regarding the bonafide need of the appellant. The learned counsel for the appellant had tried to argue that the respondent No. 1 had pleaded that her son Vinod Kumar was not employed, but there was clear evidence on record that Vinod Kumar was doing the share business and he has earned sufficient money in the business at Indore. According to the counsel for the appellant, copy of the accounts in the name of Vinod Kumar as per Ex. P-8 in the Bank of Baroda showed that Vinod Kumar was doing the share business at Indore and from time to time a large sum was being deposited in his account during the period. This fact was not considered by the trial Court to come to the conclusion that there was no bonafide need to the respondent No. 1 for her son who was already employed in the share business and he had no need to shift to Khandwa. The learned counsel for the appellant has also pointed out to this Court that Vinod Kumar in para - 4 of his cross-examination had admitted that between 17.4.91 to 16.5.91 he had deposited Rs. 67, 000/- in Bank and in February, 1992 he had deposited Rs. 93, 000/-. Although he had denied that he was an agent of Unit Trust of India or he was

working as an Insurance Agent. The very fact that he had deposited this much amount in the Bank showed that he was doing the business of share because it was not disputed by him that he was purchasing the shares. In the opinion of this Court, the trial Court has not omitted to consider this aspect of the matter. In paragraphs No. 8 and 9 of the trial Court judgment, there is a clear finding recorded by this trial Court that Vinod Kumar is not working as an agent of the Insurance Company or that of Unit Trust of India. It was further found that he was not doing any share business on behalf of the others. He was investing his own money and this according to the trial Court would not amount to doing business. It can not, therefore, be said that the trial Court had omitted any vital issue while coming to the conclusion that there is a bonafide need to the respondent No. 1 for starting the Kirana business of her son at Kahndwa and they had sufficient fund for that purpose. In other words, in the opinion of the trial Court, investing Ins own money in the share business could not conic in the category of doing business. It cannot be said to be business covered by section 12 (1) (1) of the Act and it cannot bar the respondent No. 1 from claiming eviction for starting the business of her son Vinod Kumar. It is no doubt that the lower appellate Court has not given its independent reasoning on this ground, but has generally agreed with the reasons given by the trial Court on this count. But this Court after going through the evidence on record and finding recorded by the trial Court in this behalf comes to the conclusion that no material piece of evidence was ignored by the trial Court in coming to the conclusion that the respondent No. 1 had proved her bona tide need for eviction of the appellant. The lower appellate Court after hearing the parties had generally agreed with the finding recorded by the trial Court. Thus, the finding recorded by the lower appellate Court agreeing with that of trial Court may be grossly erroneous finding of fact, but it cannot be said that such a finding can be interfered with in second appeal. Therefore, this Court comes to the conclusion that finding of fact recorded by the lower appellate Court cannot be interfered with in this appeal.

A copy of this judgment be sent to the learned Addl. District Judge wherever he is posted.

For the aforesaid reasons, this appeal is dismissed. There shall be no order as to costs of this appeal.