

(2010) 06 MP CK 0029
In the Madhya Pradesh High Court
Case No : S.A. No. 826 of 2009

Jairam Ghanera

APPELLANT

Vs

Gabbulal Hemraj Panwar and others

RESPONDENT

Date of Decision : 28-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100(5), 151
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(a),
12(1)(f)

Citation : (2010) 3 MPJR 263 : (2010) 3 MPLJ 717

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

Bench : Single Bench

Advocate : Anuj Bhargava, for the Appellant; V.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mody, J.—Appellant by Shri Anuj Bhargava, Advocate.

Respondent's by Shri V. K. Jain, Advocate.

Heard on admission.

2. Appeal is admitted for final hearing on the following substantial questions of law :-

- 1) Whether in the facts and circumstances of the case learned Courts below were justified in decreeing the suit u/s 12(1)(a) of M.P. Accommodation Control Act, while there is no attornment of the tenancy in favour of the appellant? 2) Whether in the facts and circumstances of the case learned Courts below were justified in decreeing the suit u/s 12(1)(a) of M.P. Accommodation Control Act, while the rent was deposited by the appellant in earlier suit filed by the appellant?
- 3) Whether in the facts and circumstances of the case learned Courts below were justified in decreeing in suit u/s 12(1)(a) of M.P. Accommodation Control Act, while there was no arrears on the date of filing of the suit?"

4) Whether in the facts and circumstances of the case learned Courts below were justified in decreeing the suit u/s 12(1)(f) of M.P. Accommodation Control Act, despite the availability of alternative vacant accommodation for starting the business?

5) Whether the findings recorded by the learned Court below u/s 12(1)(f) of M.P. Accommodation Control Act are perverse in view of the evidence which is on record?

3. Also heard on I.A. No. 3645/2010, which is an application u/s 100(5) of CPC learned counsel for appellant submits that the application be dismissed as withdrawn with a liberty to file fresh application keeping in view the substantial questions of law framed by this Court today. The application is dismissed as withdrawn. Also heard on I.A. Nos. 2233/2010 and 3175/2010, which are the applications filed under Order VI, Rule 17, CPC and under Order 41, Rule 27, Civil Procedure Code. These applications shall be considered at the time of hearing of the appeal.

4. Also heard on I.A. No. 2232/2010, which is an application for restitution of possession.

5. Learned counsel for appellant submits that appeal came up for hearing before this Court on 8-1-2010 and this Court was placed to stay operation of the impugned judgment and decree so far as it relates to suit property. Learned counsel for appellant submits that appellant was represented through Shri Mohan Sharma Advocate. It is submitted that in spite of stay granted by this Court warrants were issued by the learned executing Court on 15-1 -2010 and in compliance of that the possession of the suit accommodation was taken on 2-2-2010. Learned counsel submits that an application for restitution of possession was filed on 3-2-2010, which was dismissed on 10-2-2010. Learned counsel submits that appellant was in occupation of the suit accommodation, which is a small piece of platform measuring 4"x 3" and paying the rent @ Rs. 225/- per month from when appellant was running a tea stall. It is submitted that appellant was the tenant since twenty years while the suit property was purchased by the respondents on 7-12-2001. It is submitted that application be allowed and appellant be put in possession.

6. The application is opposed by the respondents. Learned counsel for the respondents submits that respondents were having no knowledge of the interim order passed by this Court on 8-1-2010. It is submitted that from perusal of the order dated 15-1-2010 it is evident that on two occasions time was given to the appellant to file copy of the order passed by this Court but copy of the order was not produced by the appellant before the learned Court below. It is submitted that no illegality has been committed by the learned Court below in passing the order dated 15-1-2010. It is submitted that the application was dismissed after more than 15 days and the possession was taken on 2-2-2010. By that time appellant did not file copy of the order passed by this Court on 8-1-2010. It is

submitted that unless and until decree is set aside no proceedings for restitution is maintainable.

7. From perusal of the record it appears that on 8-1-2010 the order passed in presence of the counsel for appellant Shri Mohan Sharma, Advocate. On his request it was also directed that certified copy be given. From record of this Court it appears that application for getting certified copy was filed on that very date and the file was dispatched to the copying section on that very date, which goes to show that copy was obtained on 8-1-2010 or in near future. It is surprising that why the copy of the order passed by this Court was not produced before the executing Court. From perusal of the record it is evident that copy of the order was dispatched by officer of this Court on 29-1-2010. In spite of that how the execution of warrant took place on 2-2-2010 is surprising. From perusal of the order dated 15-1-2010 it appears that learned executing Court had knowledge that some order was passed by this Court and two occasions were given to the appellant to bring copy of the order. In the matter of *Mulraj Vs. Murti Raghonathji Maharaj*, the Apex Court held that :-

Though the Court which is carrying on execution is not deprived of the jurisdiction the moment a stay order is passed, even though it has no knowledge of it, this does not mean that when the Court gets knowledge of it is powerless to undo any possible injustice that might have been caused to the party in whose favour the stay order was passed during the period till the Court has knowledge of the stay order. We are of opinion that section 151 of the CPC would always be available to the Court executing the decree, for in such a case, when the stay order is brought to its notice it can always act u/s 151, and set aside steps taken between the time the stay order was passed and the time it was brought to its notice, if that is necessary in the ends of justice and the party concerned asks it to do so. Though, therefore, the Court executing the decree cannot in our opinion be deprived of its jurisdiction to carry on execution till it has knowledge of the stay order, the Court has the power in our view to set aside the proceedings taken between the time when the stay order was passed and the time when it was brought to its notice, if it is asked to do so and it considers that it is necessary in the interests of justice that the interim proceedings should be set aside. But that can only be done by the Court which has taken the interim proceedings in the interest of justice u/s 151 of the CPC provided the order is brought to its knowledge and a prayer is made to set aside the interim proceedings within a reasonable time.

8. From perusal of the record it is evident that the stay was granted by this Court on 8-1-2010 while the warrant were issued on 15-1-2010 and the same was executed on 2-2-2010. The application for restitution was filed on 3-2-2010 i.e. immediately after execution of warrant. In the facts and circumstances there was no justification on the part of the executing Court keeping in view the aforesaid position of law in dismissing the application. In view of this LA. No. 2232/2010 stands allowed. The impugned order passed by the learned executing Court

dated 10-2-2010 is set aside and the application filed by the appellant before the executing Court is allowed with a direction to the learned executing Court to proceed with the case and restore the possession of the suit accommodation to the appellant forthwith and submit the compliance report.

9. Since Shri Mohan Sharma, Advocate, was the counsel appearing before the learned Courts below, therefore, office is directed to issue notice to Shri Mohan Sharma, Advocate, to explain in what circumstances the copy of the order could not be furnished before the learned executing Court.

C.C. as per rules.