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**(2013) 07 MP CK 0023**  
**In the Madhya Pradesh High Court**  
**Case No : SA No. 558 of 2013**

Nasaarauddin

APPELLANT

Vs

Dargah Subhan Allah Shah Parbandhan Committee

RESPONDENT

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**Date of Decision :** 03-07-2013

**Acts Referred:**

**Citation :** (2013) 07 MP CK 0023

**Hon'ble Judges :** N.K. Gupta, J

**Bench :** Single Bench

**Advocate :** V.N. Shukla, for the Appellant;

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## Judgement

N.K. Gupta, J.—Heard on admission. The judgment and decree dated 14.8.2006 was passed by the learned 10th Civil Judge Class-I, Jabalpur in Civil Suit No. 168-A/2005 against one Mohd. Mustakim in an ex-parte manner. The execution of the decree was instituted and the appellant raised objection that he was the actual tenant in the suit accommodation and his father was dependent upon him and he was residing with him. However, his father Mohd. Mustakim had expired on 22.2.2007, and therefore the decree was passed against a person, who was not the tenant. The learned 8th Civil Judge Class-II, Jabalpur vide order dated 16.5.2012 rejected the objection raised by the appellant. In Misc. Civil Appeal No. 12/2012 the learned Third Additional District Judge, Jabalpur vide order dated 17.4.2013 dismissed the appeal of the appellant. Being aggrieved with the orders passed by the courts below, the appellant has preferred the present second appeal.

2. After considering the submission made by the learned counsel for the appellant, it is apparent that the judgment and decree dated 14.8.2006 were passed when the defendant Mohd. Mustakim was alive. According to the death certificate, Mohd. Mustakim expired on 22.2.2007. According to the pleadings in the plaint, it is apparent that Mohd. Mustakim was residing in the house since long back and it was alleged that he did not pay the rent since February 2003. The plaintiff is the institution, which is duly registered with Wakf Board and their

registers are duly maintained. Under such circumstances, if it is pleaded that Mohd. Mustakim was the tenant in the suit accommodation, then the contention of the appellant cannot be accepted without any document that he resided as a tenant or he was the registered tenant before the plaintiff. Under such circumstances, the claim of the appellant appears to be incorrect that he was the tenant in the suit property.

3. It is alleged by the appellant that he was residing with his father and mother. Under such circumstances, he should have strictly proved that he was the tenant and his parents were dependent upon him. If a tenant who becomes old, then still he remains the tenant though he depends upon his son. Under such circumstances, if the defendant Mohd. Mustakim became old, then by his age, it cannot be said that he was not the tenant and the appellant became the tenant in the suit accommodation. Secondly, the learned Additional District Judge has observed that after the death of Mohd. Mustakim, notices were given to the appellant and he appeared as a judgment-debtor in the execution proceeding on 12.10.2007. Thereafter he did not take such an objection. After lapse of pretty long period he moved the application under Order XXI Rule 97 of CPC. Looking to the conduct of the appellant, his objection appears to be fake. If he was the original tenant, then he could have raised this objection on 12.10.2007 or soon after that date. Under such circumstances, the appellant could not establish that he was the tenant in the suit premises. An ex-parte decree was given against Mohd. Mustakim on 14.8.2006 and after his death the appellant came as his legal representative and he was standing in the shoes of the deceased Mohd. Mustakim. He was entitled to move an application for setting aside the ex-parte decree or to file an appeal against the judgment and decree, but he did not take any step in such a manner. Under such circumstances, where the appellant became the judgment-debtor after death of Mohd. Mustakim, he could not file an application under Order XXI Rule 97 of CPC for his rights in such a manner.

4. On the basis of the aforesaid discussion, it would be apparent that the Executing Court as well as the appellate Court have rightly dismissed the objection raised by the appellant under Order XXI Rule 97 of CPC. There is no basis by which the present appeal may be accepted. Consequently, it is hereby dismissed at motion stage. A copy of the order be sent to both the Courts below for information.