
(1991) 11 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 1026 of 1988

Omprakash Gupta (Dr.)

APPELLANT

Vs

Ram Prakash and Others

RESPONDENT

Date of Decision : 20-11-1991

Acts Referred:

Court Fees Act, 1870 — Section 13, 7

Madhya Pradesh Accommodation Control (Amendment) Act, 1985 — Section 9

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1), 23A

Citation : (1994) J LJ 26 : (1993) 38 MPLJ 869 : (1993) MPLJ 869

Hon'ble Judges : S.K. Dubey, J; R.C. Lahoti, J

Bench : Division Bench

Advocate : K.S. Tomar, for the Appellant; V.K. Bharadwaj, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

This petition by landlord under Article 227 of the Constitution of India is for quashing of the order (Annexure P/10) passed in revision, preferred by the tenants, aggrieved of the order of the trial court, whereby, on transfer of the application u/s 23-A of the M. P. Accommodation Control Act, 1961, for short, the "Act", the Civil court treated the same as a plaint to dispose of the same in accordance with the provisions of Chapter III of the Act, in view of Section 9 of the M. P. Accommodation Control (Amendment) Act, 1985 (Act No. 7 of 1985) (for short, the "Amendment Act"), and directed the landlord to pay the court-fees as leviable in accordance with Section 7(xi)(cc) of the Court Fees Act, 1870.

The facts leading to this petition are that the petitioner/landlord filed an application on 28-9-1984 u/s 23-A of the Act seeking eviction of the respondents (Nos. 1 and 2)/tenants from the non-residential accommodation on bona fide requirement. Because of the enforcement of the Amendment Act from 27-4-1985 the applications by landlords (except those who do not fall in the categories defined in Section 23-J of the Act) for obtaining order of eviction of tenants on

the ground of bona fide need, stood transferred for trial to the Civil Court of competent jurisdiction in view of Section 9 of the Amendment Act, which reads as under:--

"9. Transfer of pending application to civil Court. --An application filed by the landlord, other than that defined in Section 23-J, to evict the tenant exclusively on the ground of "bona fide" requirement of accommodation u/s 23-A of the principal Act before 16th January 1985 and pending on such date before the Rent Controlling Authority shall stand transferred to a civil Court of competent jurisdiction and such Court shall proceed to dispose of the same in accordance with the provisions of Chapter III as if it were a plaint."

On transfer of the application, received on 17-12-1985, the District Judge made it over- to the civil Court of competent jurisdiction. The tenants without filing the written statement, moved an application on 22-8-1987 for dismissing the suit under Order 7, Rule 11, CPC for non-payment of the requisite court-fees on the plaint. The landlord amended the plaint and paid court-fees of Rs. 772/- valuing the claim for ejectment on the basis of annual rental value in accordance with the provisions of Section 7(xi)(cc) of the Court Fees Act. The tenants contended that in court-fees has to be paid not only on the basis of the valuation of the suit as above, but ad valorem court-fee is to be paid on the arrears of rent till 17-11-1987. The trial Court dismissed the application. Review application was also dismissed. The tenants took the matter in revision before the District Judge. The revisional Court (first Additional Judge to the Court of District Judge, Gwalior) allowed the revision and directed the landlord to pay ad valorem court-fees on the arrears of rent claimed till 17-11-1987, placing reliance on a Single Bench decision of this Court in Decon Marketing Ltd. v. Kallu Bhai, 1986 MPRCJ 306, wherein it is observed:

"Order IV, Rule 1 of the CPC provides that every suit shall be instituted by presenting a plaint to the Court. Rule 2 provides that the Court shall cause the suit to be entered in the register of suits. Order V, Rule 1, provides that when a suit has been "duly instituted," a summons may be issued to the defendant to appear and answer the claim on a date to be specified therein. The phrase "duly instituted" must mean a plaint with proper court-fees and other essential requirements of a plaint. It was not disputed before me that respondent No. 1 did not pay court-fees required on plaint in an eviction suit. It was the first and foremost duty of the transferee civil Court to have called upon the plaintiff to make good the deficit court-fee before proceeding further in the suit. The plaintiff did not dispute that if the "application" is treated as plaint, it has to be affixed with requisite court-fee as well. In the absence of proper court-fees, the Court below could not treat it as a plaint at all."

The effect of Section 9 of the Amendment Act was considered by this Court in two cases. In Pannalal Shrivastava v. D.C. Mishra 1986 MPLJ 680, this Court observed that by the Amendment Act of 1985 cases pending before Rent Controlling Authority to evict tenants exclusively on the ground of "bona fide"

requirements, except those covered u/s 23-J of the Act, stood transferred to the civil Court of competent jurisdiction. On such transfer, the application by the landlord is deemed to be a plaint and the proceeding in the civil Court based on it is deemed to be of regular civil suit. The trial of the suit is not de novo; the civil Court can record further evidence but the evidence recorded before the Rent Controlling Authority is not to be excluded.

In case of *Ravindra Kumar v. Prakashchand* 1989 MPLJ 195, the Court held that a bare reading of Section 9 of the Amendment Act makes clear that on transfer of the proceeding to civil Court of competent jurisdiction, the application is deemed to be a plaint and the proceeding in the civil Court based on it is deemed to be a regular civil suit. It is, therefore, obvious that all the incidents of a regular civil suit would apply to its trial in the civil Court from that stage.

A learned Single Judge (B.C. Varma, J., as he then was) in case of *Baijnath v. Narayan Prasad* 1991 MPLJ 241 : 1990 MPJR 381, considered the legislative history of Rent Legislation in M. P., aforesaid three decisions and the effect of the fiction created by Section 9 of the Amendment Act, and observed that the deeming provision in Section 9 has to be construed in the light of the purpose behind; therefore, all those effects and consequences which are incidental must be assumed, fiction must be given its full effect but not beyond its purpose. The application so transferred, to be treated as a plaint, must suffer the incidents of a plaint and fulfil its requirements (in the matter of signing, verification, valuation and payment of court-fees), and after that the suit has to proceed according to CPC and not according to various clauses of Section 23 of the Act. After the application is treated as a plaint, summons has to be served on defendant as required by Order 5 of Civil Procedure Code. The landlord can seek eviction on other grounds u/s 12(1) of the Act also; because of transfer and conversion of the application to be a plaint the entire procedural complexion including the scope of right of the defendant-tenant to resist the action for his eviction, as he would do in a regular civil suit, changes.

In none of the cases referred to above, it has been held that a landlord has to value the suit till the application is received on transfer, or till the date of the application for amendment or incorporation of the same for the purposes of payment of court-fees on the arrears of rent, besides court-fees payable u/s 7(xi) (cc) of the Court Fees Act, for eviction.

It is a rule of interpretation well settled that a deeming provision is an admission of the non-existence of the fact deemed. The Legislature is quite competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist, on which alone the fiction can operate. (See *J.K. Cotton Spinning and Weaving Mills Ltd. and Anr Vs. Union of India (UOI)* and *Ors, and Commissioner of Income Tax, Delhi Vs. S. Teja Singh*,

In case of *Baijnath* (supra) the learned Judge considered the question what procedure has to be followed on the transfer of the application filed before the

Rent Controlling Authority (for short, the "RCA") in view of Section 9 of the Amendment Act, in the light of the language of relevant portion of the Section "such Court shall proceed to dispose of the same in accordance with the provisions of Chapter III as if it were a plaint." After referring to law and quoting a passage at page 208 of the celebrated book "Principles of Statutory Interpretation," Fourth Edition, by G. P. Singh, a retired Chief Justice of this Court, the learned Judge observed in para 6:

"The legal fiction should not be extended beyond the purpose for which it is enacted for "legal fictions are created only for some definite purpose." They have to be limited to the purpose for which they are created and should not be extended beyond that legitimate field. See *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, One must, therefore, before applying the legal fiction created by the aforesaid Section 9 of the M. P. Accommodation Control (Amendment) Act, 1985, ascertain its purpose."

In Chapter III of the Act, Section 12(1) deals with the restriction on eviction of tenants. Each of the clauses of Section 12(1) provides separately and independently different causes of action for eviction and even if a claim is founded cumulatively on several of them, the Court can pass a decree in respect of only such ground in regard to which entitlement is found duly established. (See a Single Bench decision of this Court in *Bhagwandas v. Kailash Narayan* 1991 MPLJ 801. In the petition, the question relates to grounds under Sections 12(1)(a) and 12(1)(f) of the Act. Section 12(1)(a) relates to a ground in respect of non-payment of the arrears of rent legally recoverable from the tenant within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner. u/s 12(1)(f) a landlord can get a decree of eviction of the accommodation let for non-residential purpose on the ground of bona fide requirement for the purpose of continuing or starting his business.

Chapter III-A of the Act deals with eviction of tenants on the ground of "bona fide" requirement. The provisions contained in this Chapter override the provisions of Section 12.

The RCA has been vested with the jurisdiction to deal with the applications of specified landlords u/s 23-A only on bona fide requirement. The RCA has no jurisdiction or authority to pass a decree for arrears of rent claimed, which had fallen due prior to the filing of an application for eviction u/s 23-A of the Act, nor it has any jurisdiction or authority to pass a decree for eviction u/s 12(1)(a), the tenant is not bound to deposit those arrears of rent with the RCA which had fallen due prior to the filing of the application. For recovering those past arrears of rent the landlord has the only remedy of approaching the civil Court of competent jurisdiction. Therefore, the RCA cannot call upon the tenant to deposit past arrears of rent, nor for failure of the tenant to deposit the same, the RCA can strike out the defence as contemplated by Section 13(6) of the Act. In view of the provisions of Section 23-H of the Act, on an application u/s 23-A being

filed by the RCA, the tenant within one month from the date of service of notice of that application, is bound, to deposit or pay to the landlord the rent which is due from the date of filing of the application before the RCA and shall continue to deposit the same or pay to the landlord by the 15th of each succeeding month till the decision of the application by the RCA on merits, provided no other suit for eviction on other grounds as contemplated by Section 12(1) of the Act, filed by the landlord against his tenant in the civil Court of competent jurisdiction is pending. (See a Division Bench decision of this Court in *Ratnakar v. Haji Inayatullah* 1988 MPLJ 665).

On such deposits of rent by the tenant u/s 13 of the Act, withdrawal by the landlord of the amount so deposited and directed to be paid, is not fettered by condition of payment of court-fees thereon. Section 11 of the Court Fees Act speaks of payment of court-fees on mesne profits, which is payable on the amount decreed before the decree is executed. Up to the stage when no decree is passed determining the amount due to the plaintiff, there is no question of demanding court-fees from the plaintiff. If the defendant paid any amount to the plaintiff during the pendency of the suit it has to be given credit while passing the ultimate decree and court-fees would be payable only on the amount which is ultimately decreed, and for which the plaintiff has to file an execution application against the defendant. (See Division Bench decision in *Shyama Charan Tiwari v. Sheoji Bhai*, 1971 MPLJ 78 : 1971 JLJ 130, and Single Bench decision in cases of *Shanti Devi* 1981 MPRCJ 73; *Kailash Narain*, 1978 MPLJ 109 : 1978 (1) MPWN 446, and *Dayaldas*, 1974 MPLJ 920= 1975 JLJ 40.)

Therefore, the contention of Shri K. S. Tomar, learned counsel for the petitioner, is right that once the requisite court-fees u/s 7(xi)(cc) of Court Fees Act, is paid on the application for treating the same as a plaint, or the plaint is amended in view of Section 9 of the Amendment Act, a landlord is not liable to pay ad valorem court-fees on the monthly rents deposited u/s 13 of the Act.

The question still remains to be decided whether on such transfer, in view of the law laid down in *Bajinath* 's case (supra), a landlord can seek eviction on the ground of default in payment of arrears of rent u/s 12(1)(a) and, if he can, then certainly, as rightly contended by Shri V.K. Bharadwaj, learned counsel for the tenants, placing reliance on short-noted decision of a learned Single Judge of this Court in 1982 MPWN 401, *Shri Ramkrishan Trading Co. v. Smt. Shakuntala Devi*, that, as the suit will not only be for possession but for arrears of rent also, the court-fees payable on the former relief would be under Sub-clause (cc) of Clause (xi) of Section 7 of the Court Fees Act, and for the latter ad valorem court-fees on the money claimed.

As the RCA has no jurisdiction to pass a decree of eviction except on the ground of bona fide requirement, and if the landlord has not initiated the action on other causes which were available to him u/s 12(1) at the time of filing of the application u/s 23-A before the RCA, on transfer of the application to the civil Court, if the cause of action is available on other ground or grounds, the landlord

is certainly entitled to take them by amending the plaint and on payment of court-fees, if "required. But, if the cause becomes barred by time, such a claim cannot be set up by amendment. The law is settled that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action, which, since the institution of the suit, had become barred by limitation, the amendment must be refused. (See Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others,

Looked with that angle, there is an averment in para 2 of the application (which stood transferred to the civil Court), that the tenants have not paid the arrears of rent due from 1-6-1980, in spite of demand notice dated 15-4-1984. In the relief clause a prayer has been made for a decree. But, as said above, the RCA was not vested with the jurisdiction to pass a decree u/s 12(1)(a) of the Act; the petitioner/plaintiff having failed to institute a suit in the civil Court for recovery of arrears of rent and for eviction on the ground u/s 12(1)(a) and having allowed a part of the claim to become barred by time, cannot claim the arrears of rent till the date of filing of the application before the RCA. When a part of that claim cannot be allowed by amendment, then the plaintiff/landlord cannot be forced to make the payment of ad valorem court-fees on the arrears of rent due from 1-6-1980. Therefore, the suit valued by the landlord and the court-fees paid in accordance with Section 7(xi)(cc) of the Court Fees Act, in the opinion of this Court, was proper. However, if a part of the plaintiff's claim for arrears of rent on the date of application for proposed amendment in the civil Court was within limitation, that can be claimed by amendment and on payment of court-fees.

In the result, the petition is allowed. The order of the revisional Court is quashed and that of the trial Court is restored. The parties shall appear before the trial Court on 29-11-1991, and for that no fresh notice shall be issued. No costs.