

(2010) 10 CHH CK 0027
In the Chhattisgarh High Court
Case No : Second Appeal No. 437 of 1992

Panchamlal

APPELLANT

Vs

Shiv Shankar Sharma (Died and Deleted) Chandra Prakash
Sharma and Others

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 22 , Order 41 Rule 22(1), Order 41 Rule 22(4), Order 41 Rule 27
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1), 12(1), 12(7), 18

Citation : (2011) 1 CGLJ 516 : (2011) 2 MPJR 1 : (2011) 2 RCR(Rent) 14

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—By this appeal under of the Code of Civil Procedure, 1908 (for short "the Code"), the Appellant has challenged legality & propriety of the judgment & decree dated 23-10-92 passed by the 1st Additional District Judge, Raipur in Civil Appeal No. 58A/91 allowing the civil suit by reversing the judgment & decree of dismissal of suit, dated 1-8-88 passed by the 7th Civil Judge Class-II. Raipur in Civil Suit No. 98A/86. The lower appellate Court has decreed the suit under Sections 12 (1) (g) & (h) of the Chhattisgarh Accommodation Control Act, 1961 (for short "the Act").

2. This appeal is admitted for hearing on the following substantial question of law:

Whether the ground u/s 12(1)(h) of the M.P. Accommodation Control Act, 1961 is made out, taking into consideration the effect of Section 12(7) of the M.P. Accommodation Control Act, 1961.

3. Original Respondent Shiv Shankar Sharma (since deceased) has filed cross-objection under Order 41 Rule 22 read with Rule 33 of the Code and I.A. No. 3464/1993 for taking additional evidence under Order 41 Rule 27 of the Code.

4. As per pleadings of the parties, original Respondent/Plaintiff Shiv Shankar Sharma (since deceased), landlord of the suit premises, filed suit for eviction and recovery of rent against the Appellant herein on the ground of bona fide need for non-residential purpose and reconstruction of suit accommodation. By filing written statement, the Appellant herein has denied the allegations made in the plaint relating to bona fide need and need of accommodation for reconstruction. After affording opportunity of hearing to the parties, learned Civil Judge Class-II has dismissed the civil suit for eviction, same was challenged in appeal before the lower appellate Court and the lower appellate Court by allowing the civil appeal has decreed the suit under Sections 12(1) (g) & (h) of the Act and directed the Appellant herein u/s 18 of the Act for handing over the possession of tenanted accommodation after such reconstruction.

5. I have heard learned Counsel for the parties, perused judgment & decree of both the Courts below and records of both the Courts below.

6. At the out set, learned Counsel for the Appellant submitted that in the present case, the sole Respondent/landlord has died and the Appellant has impleaded his legal representatives as Respondents, but the Respondents have not amended their cross-objection suitably and have not brought the legal representatives of the deceased sole Respondent on record within the stipulated time and, therefore, the cross-objection filed on behalf of the Respondent, virtually deceased Shiv Shankar Sharma, abates and is liable to be dismissed as abated. Learned Counsel further argued that on the basis of cross-objection no substantial question of law has been formulated and, therefore, even otherwise, the Respondents are not entitled to challenge the judgment & decree on the basis of cross-objection. Learned Counsel also argued that in the present case, without any evidence the lower appellate Court has decreed the suit in favour of the Respondents. The Respondents have not proved budget estimate and eviction of suit premises on the ground of reconstruction. Without such proof the lower appellate Court was not competent to decree the suit under Sections 12(1) (g) & (h) of the Act. Learned Counsel placed reliance in the matter of Kashmir Singh Vs. Harnam Singh and Another, in which the Supreme Court has held that without formulation of substantial question of law the second appeal is not maintainable.

7. On the other hand, learned Counsel for the Respondents submitted that the Respondents have not filed any cross-appeal, they have filed cross-objection in which the Appellant has impleaded the legal representatives of the deceased sole Respondent as party and, therefore, the Respondents are not required to implead themselves as legal representatives of the deceased sole Respondent as party in the present cross-objection and the cross-objection filed on behalf of the deceased sole Respondent is maintainable. The Respondents have proposed substantial questions of law for the decision of this appeal and the same can be considered in terms of proviso to Sub-section (5) of Section 100 of the Code and the appeal can be heard even without formulating any substantial question of

law. Learned Counsel placed reliance in the matter of Babulal and Ors. v. Shankar Lal and Ors. (2008) 17 SCC 638 in which the Supreme Court has held that in absence of any substantial question of law, High Court in second appeal not justified in interfering with the findings of first appellate court even if the findings were erroneous.

8. In the present case, the original Respondent/landlord died and the Appellant has impleaded his legal representatives as the Respondents. The original Respondent has filed cross-objection under Order 41 Rule 22 of the Code, but the legal representatives of the deceased sole Respondent have not impleaded themselves as Respondents in the cross-objection.

9. While dealing with the question of nature and scope of cross-objection and appeal, the Supreme Court in the matter of Superintending Engineer and Others Vs. B. Subba Reddy, has held that cross-objection is virtually an appeal and all relevant provisions relating to appeal will be applicable in cross-objection. Para 24 of the said judgment reads thus,

24. From the examination of these judgments and the provisions of Section 41 of the Act and Order 41, Rule 22 of the Code, in our view, following principles emerge:

(1) Appeal is a substantive right. It is a creation of the statute. Right to appeal does not exist unless it is specifically conferred.

(2) Cross objection is like an appeal. It has all the trappings of an appeal. It is filed in the form of memorandum and the provisions of Rule 1 of Order 41 of the Code, so far as these relate to the form and contents of the memorandum of appeal apply to cross-objection as well.

(3) Court fee is payable on cross-objection like that on the memorandum of appeal. Provisions relating to appeals by indigent person also apply to cross-objection.

(4) Even where the appeal is withdrawn or is dismissed for default, cross-objection may nevertheless be heard and determined.

(5) Respondent even though he has not appealed may support the decree on any other ground but if wants to modify it, he has to file cross-objection to the decree which objections he could have taken earlier by filing an appeal. Time for filing objection which is in the nature of appeal is extended by one month after service of notice on him of the day fixed for hearing the appeal. This time could also be extended by the Court like in appeal.

(6) Cross-objection is nothing but an appeal, a cross-appeal at that. It may be that the Respondent wanted to give quietus to whole litigation by his accepting the judgment and decree or order even if it was partly against his interest. When, however, the other party challenged the same by filing an appeal statute gave the Respondent a second chance to file an appeal by way of cross-objection

if he still felt aggrieved by the judgment and decree or order.

10. While dealing with same question the Supreme Court in the matter of Municipal Corporation of Municipal Corporation of Delhi and Others Vs. Intl. Security and Intelligence Agency Ltd., has over ruled point No. (4) of para 24 of the judgment of the Supreme Court delivered in the matter of Superintending Engineer and Others Vs. B. Subba Reddy, , and held that in case the appeal is not maintainable the cross-objection by the Respondent is also not maintainable. Paras 18,20 & 21 of the said judgment read thus,

18. We have, therefore, no doubt in our mind that right to take a cross objection is the exercise of substantive right of appeal conferred by a statute. Available grounds of challenge against the judgment, decree or order impugned remain the same whether it is an appeal or a cross-objection. The difference lies in the form and manner of exercising the right; the terminus a quo (the starting point) of limitation also differs.

20. Once we hold that by taking cross objection what is being exercised is the right of appeal itself, it follows that the subject-matter of cross objection and the relief sought therein must conform to the requirement of Section 39(1). In other words, a cross objection can be preferred if the Applicant could have sought for the same relief by filing an appeal in conformity with the provisions of Section 39(1) of the Act. If the subject-matter of the cross objection is to impugn such an order which does not fall within the purview of any of the categories contemplated by Clauses (i) to (vi) of Sub-section (1) of Section 39 of the Act, the cross objection shall not be maintainable. Effect on cross objection if the appeal itself is held not competent or not maintainable?

21. What happens to cross objections if the appeal itself is found to be incompetent or not maintainable? Sub-rule (4) of Order 22 of the CPC provides for only two situations in which the cross objection may be heard in spite of the original appeal having not been heard on merits. These situations are two: (i) the original appeal being dismissed as withdrawn, (ii) the original appeal being dismissed for default (default in appearance or any other default). Just as the enabling provisions of cross objection contained in Sub-rule (1) of Order 22 of the CPC are applicable to appeals u/s 39 of the Act the disabling provision contained in Sub-rule (4) too would apply to appeals u/s 39 of the Act in view of the generality of the provisions contained in Section 41 of the Act. To put it briefly, if the Appellate Court forms an opinion that the original appeal itself was incompetent or not maintainable as it was filed against an order not falling within one of the Clauses (i) to (vi) of Sub-section (1) of Section 39 then the cross objection shall also fall to the ground and cannot be adjudicated upon on merits. It has to be remembered that law of limitation operates with all its rigour and equitable considerations are out of place in applying the law of limitation. The cross-objector ought to have filed appeal within the prescribed period of limitation calculated from the date of the order if he wished to do so. Having allowed that opportunity to lapse he gets another extended period of limitation

commencing from the date of service of the notice of the appeal enabling him putting in issue for consideration of the Appellate Court the same grounds which he could have otherwise done by way of filing an appeal. This extended period of limitation commences from the date of service of the notice of appeal and such notice ought to be in a valid or competent appeal.

11. Cross-objection is not an independent appeal. But by filing cross-objection in appeal under Order 41 Rule 22 of the Code, the original Respondent contests the issue which has not been decided in his favour or supports the judgment and decree against which regular appeal has been filed and if regular appeal is dismissed for want of competency then the independent cross-objection is not maintainable, the cross-objection is a proceeding in a regular appeal and not an independent proceeding. Once legal representatives are brought on record in any capacity, again impleading legal representatives in cross-objection would be a mere formality and without impleading legal representatives of the deceased, party are competent to address the Court.

12. While dealing with the question of impleading legal representatives of the deceased in cross-appeal, the Supreme Court in the matter of N. Jayaram Reddy and Another Vs. Revenue Divisional Officer and Land Acquisition Officer, Kurnool, has held that two independent appeals filed against the same judgment & decree which were heard together impleading the legal representatives in one appeal would be sufficient compliance of Order 22 of the Code and only on the ground that the party has not impleaded legal representatives of the deceased in cross-appeal, the appeal did not abate.

13. Parties in cross-objection are on better footing than parties in cross-appeal. Therefore, on the ground that the legal representatives of the deceased sole Respondent have not impleaded themselves as party in the cross-objection, the cross-objection would not abate.

14. In the present case, the trial Court has dismissed the suit, but the lower appellate Court after appreciating the evidence has decreed the suit under Sections 12(1) (g) & (h) of the Act and also directed for recovery/handing over the possession after rebuilding.

15. Both the parties have led evidence.

16. The lower appellate Court has decreed the suit on the ground of rebuilding. Original Plaintiff Shiv Shankar Sharma (since deceased) has deposed in his evidence that he wants to reconstruct the building, the building is in dilapidated condition and he has prepared estimate and he is also having sufficient funds for reconstruction. He has examined Rakesh Kumar Gupta (PW-5) - Sub Engineer, Municipal Corporation, Rajnandgaon, who has deposed that the said building is in dilapidated condition and is an old building.

17. The Appellant herein has denied the fact and has stated in para 14 of his evidence that he did not know the condition of the accommodation adjoining to

his rented accommodation. His witness Marutravti Majibhenge (DW-2) has admitted that the house is 50-60 years old and covered by tin shed.

18. On the basis of evidence of Shiv Shankar Sharma (PW-1), Appellant herein Panchamlal Gupta, his witness Marutravti Maji Bhenge (DW-2) & Rakesh Kumar Gupta (PW-5), the lower appellate Court has arrived at finding that the house is in dilapidated condition and it requires reconstruction, and has granted for eviction under Sections 12(1) (g) & (h) of the Act. While granting decree, the lower appellate Court has considered the fact that the Appellant has chosen recovery of possession and, therefore, the Court below has directed recovery of possession after reconstruction in terms of Section 18 of the Act.

19. As regards bona fide need of the Respondents, evidence adduced on behalf of the parties is not sufficient for drawing inference that the Respondents require tenanted accommodation for their own use. Concurrent findings of both the Courts below are based on evidence of the parties. Therefore, I do not find any substantial question of law relating to bona fide need of the Respondents.

20. The Respondents have proved the ground of Sections 12(1) (g) & (h) of the Act, nothing has been suggested or proved by the Appellant that the Respondents will violate Sub-section (7) of Section 12 of the Act or they will radically alter the purpose for which the accommodation was let.

21. Consequently, the substantial question of law formulated for the decision of this appeal is decided that the Respondents have made out the ground u/s 12(1) (h) of the Act and they have not violated the provisions of Section 12(7) of the Act.

22. On the basis of the aforesaid decision on the substantial question of law, I do not find any merit in the appeal. The appeal is liable to be dismissed and it is hereby dismissed. Parties shall bear their own costs.

23. Cross objection filed on behalf of original Respondent Shiv Shankar Sharma is also dismissed.

24. Advocate fees as per schedule.

25. Decree be drawn up accordingly.