

(1998) 02 MP CK 0010
In the Madhya Pradesh High Court
Case No : C.R. No. 523 of 1997

President, Transport Co-operative Bank and Others	APPELLANT
Vs	
Smt. Chandrababha	RESPONDENT

Date of Decision : 28-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 23A, 23B, 23C, 23E

Citation : (1998) 1 MPJR 386 : (1998) 2 MPLJ 333

Hon'ble Judges : R.D. Shukla, J

Bench : Single Bench

Advocate : Polekar, for the Appellant; K.G. Maheshwari, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Shukla, J.

The revision is directed against the order dated 31-3-1997 of Rent Controlling Authority, Indore, passed in Case No. A(90)(7)-12/94, whereby a decree of eviction has been passed against the defendant-applicant.

The following facts are undisputed : The plaintiff-non-applicant is the landlady of the house in question. The applicants here have taken the house on rent of Rs. 2,500/- p.m. There was exchange of notice between the parties regarding eviction of the house.

The plaintiff-non-applicant's case in brief is that the suit house was initially let out to one Sardar Shersingh for residential purpose. The rent was being collected by her father-in-law and husband. Her husband died on 28-3-1988. Thereafter, she was living along with her 2 minor children, her father-in-law and brother-in-law. Her father-in-law executed a will and thereby gave the suit accommodation to her. Her father-in-law died on 30-1-1993. Presently the plaintiff is residing in the house which falls in the share of his brother-in-law (husband's younger

brother). Now, her son and daughter have become major. She is being persuaded to go to her own house. She, therefore, bona fide requires the house for her residence. She has no other suitable accommodation for her residence. It was also asserted that the house was let out for composite purposes residential and non-residential. The house was constructed for residential purpose. Initially, it was let out for residential purpose and, thereafter, it was put to non-residential use and, as such, has taken a status of composite purpose. She bona fide requires the house for his residence with no alternative accommodation for the purpose and, therefore, the suit for eviction before the Rent Controlling Authority.

The defendant-applicant resisted the suit and pleaded that the house was let out for non-residential purposes. The defendants are running a Transport Bank in the building. The applicant initially wanted to increase the rent and, thereafter, has filed suit on false grounds. It has also been submitted that for putting the house to the use of Bank strong room was constructed at the cost of defendant in the knowledge of plaintiff and her predecessor and, therefore, now she cannot be allowed to say that the house was let out for residential purpose. Shersingh has never taken the house in his personal capacity and took it on rent for running the Bank.

The learned Rent Controlling Authority found that the plaintiff-non-applicant bona fide requires the house for her residence and residence of her children who have attained the age of 18 years. The plaintiff-non-applicant has no other suitable alternative accommodation for residence in her possession. Initially the house was given to Shersingh for residential purpose and thereafter the house was put to non-residential use which was accepted by the plaintiff landlord and her predecessors. The rent was being collected with the knowledge that the defendants are running Bank in the suit premises. Thus, finding it to be an accommodation for composite purpose and further holding it to be that the plaintiff landlady bona fide requires the accommodation, has passed order of eviction. Hence, this revision by the tenants.

The contention of the learned counsel for the tenants-applicants is that the suit house was let out for non-residential purpose. The plaintiff and her predecessors were collecting rent with the full knowledge that the bank is being run in the house and, therefore, now they cannot be allowed to revert back and claim the accommodation for residential purpose. It is also submitted that the plaintiff and her predecessors have increased the rent periodically with the concurrence of the defendants and now having failed in getting the rent increased at their behest the plaintiff is trying to oust them from the suit accommodation.

As against it, learned counsel for the N.A. has submitted that the suit accommodation was constructed for residential purpose. It was let out for that purpose and, thereafter, it was put to non residential use and as defendants were in possession of the suit accommodation the plaintiff and her predecessor did not take serious objection and accepted the rent which was slightly increased after some interval.

The suit was filed under Chapter 3-A with the aid of specific provisions of Section 23-A, B and C of the M. P. Accommodation Control Act. Section 23-E provides revision against order of Rent Controlling Authority. Although, the legislature has prohibited an appeal from the order of the Rent Controlling Authority passed under any of the sections namely Section 23-A to Section 23J, it has nonetheless conferred upon the High Court very wide powers of revision under this section, whereby the High Court can make legal an illegal order, make proper an improper order, correct an incorrect order, regularise an irregular proceedings of the Rent Controlling Authority. It can also interfere where Rent Controlling Authority has exercised jurisdiction not vested in it or has failed to exercise jurisdiction or acted in exercise of the jurisdiction illegally and with material irregularity. Thus, the High Court while exercising its jurisdiction has power to look into the correctness of the finding regarding bona fide need of the appellant, but in examining the correctness of the finding the High Court would not act as Court of appeal and reappreciate the evidence to come to its own conclusion. See *Mahendra Kumar v. Dharamchand* 1986 MPLJ 80 : 1986 JU 145.

The power of revision is not restricted to the narrow limits of Section 115, CPC but it is not as wide as that of an appeal and, therefore, the High Court is required to interfere only to prevent miscarriage of justice. *B. Johnson Vs. C.S. Naidu*,

While dealing with the scope of interference in the cases of revision the Apex Court of this country has propounded following principles of law :-

"The criticism that it was impermissible for the High Court in its revisional jurisdiction to interfere with the finding of fact recorded by the appellate authority, however erroneous they may be, is not, having regard to the language in which the revisional power is couched, tenable. In an appropriate case, the High Court can reappraise the evidence if the findings of the appellate Court are found to be in-firm in law.... *Ram Dass Vs. Ishwar Chander and Others*, ."

Now, therefore, this Court will examine the correctness and legality of the order with the limitations as above.

The plaintiff has stated that presently she is residing along with her brother-in-law in House No. 3 New Palasia. She has further stated that her father-in-law by a Will has given this house to her with further condition that she would be permitted to live along with her brother-in-law till her children gain majority. Since her children have become major, she is being persuaded to go to her own house and she has no other suitable accommodation for her residence. There is no serious dispute on these points.

She has further stated that initially this house was given to Shersingh after about 8 months of her marriage. She herself resided in that house after her marriage for about 6 months. There is no cross-examination challenging this fact. This goes to show that initially the house was for residential use. She has further stated that a Bank was started thereafter during the life time of her husband.

Rent was being collected by her husband. After the death of her husband she requested Shersingh to vacate the house, but they did not vacate, as such, first notice was sent and then suit was filed. She has admitted during cross-examination that after residing for some time in this house she along with her husband shifted to other house and was residing along with her father-in-law and it was thereafter that father-in-law let out the house. The bank was opened thereafter. It has not been challenged that initially the house was given to Shersingh. Shersingh was one of the office holder of the defendant Bank, but the defendant Bank has failed to rebut the assertion of the plaintiff that the suit house was initially given to Shersingh for residence.

D.W. 1 Indersingh has admitted that initially the house was given to Sardar Shersingh, but has clarified that Sardar Shersingh has not taken the house in his personal capacity. During cross-examination he has admitted that a document was executed and it was signed by an officer of the Bank and by Kamal Kishor (husband of the plaintiff). It is pertinent to note that no such document, despite admission of its existence, has been produced. Thus, the defendant Bank has withheld an important piece of evidence and, therefore, the learned Rent Controlling Authority has rightly drawn an adverse inference and held it that the house was initially let out for residential purpose.

While determining that nature of accommodation i.e., whether it is residential or non-residential it has to be seen what was the purpose of letting at the initial stage. (See 7963 J.L.J. 282, *Niranjansingh v. Shrikrishna*). The second test for determining the nature of accommodation would be to look to its structural design. (See 1981 M.P.R.C.J. 80, *Bhagwandas v. Sureshchandra*.)

As observed in earlier paragraphs initial letting to Shersingh was for residential purpose. The finding of learned Rent Controlling Authority on this point is based on sound reasonings. This Court finds no reason for coming to a different conclusion.

When examining from the structural point of view the map admitted by the parties does show that initially the house was constructed for residential purpose as it has got kitchen, small store room and dining accommodation as well. In the opinion of this Court, therefore, from the point of view of structural design also the house was constructed for residential purposes. However, it has been admitted by the plaintiff and her witnesses that the bank was started later on. Thus, the fact was brought to the notice of landlord. The landlord has accepted the rent from the Bank as well and thus, they have not objected to the use of accommodation for non-residential purpose. The rent was also being collected knowing it to be that the accommodation has been put to non-residential use. It has also come in the evidence that some employees of Bank are still residing in the rear part of the building. In such a situation the accommodation will be deemed to be an accommodation for composite purpose i.e., residential and non-residential both, and this character has been accepted by the landlord. However, that will not make it accommodation wholly for non-residential purpose, because

structural design and that original letting was for residential purpose and the landlord also resided in that house for sometime and, therefore, merely because the Bank has been allowed to be run will not make it an accommodation wholly for non-residential purpose. (See 1979 MPRCJ 114, Haji Roshankha v. Vardhaman).

On the maximum what can be said in favour of the tenant-applicant is that the accommodation has gained a character of composite tenancy. It will have to be examined as to whether an accommodation for composite purpose can be got vacated for one purpose or for residential purpose?

Consistent view of this High Court has been that in case of composite tenancy if it is established that the landlord required non-residential part of the accommodation or residential part of the accommodation; a decree for eviction of the tenant from the entire premises can be passed. Reference may be had to a D.B. decision, as reported in 1982 JLJ 319, Jagdish Kumar v. Jagdish Chandra and 1985 MPWN 405, Ramswarup v. Sitaram Mathur.

Now, the next point that arises for determination is as to whether the plaintiff landlord has no other suitable accommodation? It has come in the evidence of the plaintiff landlord and her witnesses that she is a widow. Presently she is residing with her brother-in-law (husband's younger brother) and this house has been given by a Will to her by her father-in-law. Her father-in-law expired and the Will has come in operation. The condition imposed in the Will does indicate that the plaintiff landlord shall be allowed to live along with her brother-in-law till her children gain majority. Now, it is not in dispute that sons and daughters of plaintiff-landlord have become major and, therefore, now she has no right to live in the house falling in the share of her brother-in-law. The plaintiff and her witnesses have clearly stated that she is being persuaded to go to her own house. It has also been stated by the witnesses and found by the learned Rent Controlling Authority that the plaintiff-landlord has no other suitable accommodation in the city of Indore for her own residence and for residence of her children specially the daughter. She has very clearly stated that she would live along with her daughter and son in the suit accommodation. There is nothing to disbelieve this aspect of evidence. The learned Rent Controlling has, therefore, rightly found that the plaintiff landlord bona fide requires the accommodation for her residence.

It has been submitted on behalf of the applicant that the house in possession of her (plaintiff's) brother-in-law is sufficiently spacious and, therefore, she can be accommodated there and can live with them peacefully. Looking to the condition imposed in the Will the plaintiff is required to vacate the premises given in the share of her brother-in-law. In such a situation she cannot be compelled to live along with her brother-in-law. Brother-in-law of the plaintiff can also not be compelled to accommodate her against the wishes of his father. Even otherwise it is for the landlord to elect and choose as to whether she wants to persuade her relation for accommodating her or wants to shift to the accommodation falling in

her share. If she has elected to occupy the accommodation falling in her share the same cannot be said to be lacking in bona fide.

Thus, from the discussions above, it is evident that the finding of learned Rent Controlling Authority about the bona fide requirement of plaintiff landlord also calls for no interference.

16A. As a result, revision fails and is hereby dismissed with costs. However, as the accommodation was put to non-residential use and tenant would also require some time for searching a suitable accommodation, they (tenants) are, therefore, granted two months time for the same as provided u/s 12(5) and 12(6) of the M. P. Accommodation Control Act. The tenants-applicants shall vacate the house by the end of April .1998, i.e., after two months from today.

The house was let out in August 1974 and the suit for eviction was filed on 26-3-1994 i.e., after about 20 years. The bank is being run in the building for more than last 10 years, therefore, it is also directed that the plaintiff-landlord (NA here) shall deposit double of the amount of the annual standard rent (i.e., rent per month) before the Rent Controlling Authority within a month from today which shall be paid to the tenants-applicants after vacation of the house. Counsel fee Rs. 500/-.