

(1988) 10 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 41 of 1988

Radheshyam Chintaman

APPELLANT

Vs

Employees' State Insurance Corporation, Ujjain

RESPONDENT

Date of Decision : 23-10-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 149

Court Fees Act, 1970 — Section 4

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

Citation : (1989) MPLJ 191

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : R.L. Mishra, for the Appellant; V.C. Behl, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

This is a petition under Article 227 of the Constitution of India by the landlord-petitioner for quashing of the order passed in Civil Revision No. 87/86 on 12-1-1987 by the Additional District Judge, Neemuch to the Court of the District Judge, Mandsaur.

Brief facts, leading to this petition are: that the petitioner filed an application u/s 23-A(a) of the M. P. Accommodation Control Act, 1961 (for short "the Act") for ejectment of the respondent No. 3 the tenant from the residential suit premises on the ground of bona fide requirement, As a result of the amendment in S. 23-J of the Act by M. P. Accommodation Control (Amendment) Act No. 7 of 1985 as the petitioner did not fall within the category of landlord defined in S. 23-J of the Act as amended, the application of the petitioner by order dated 31-1-1985 of the Rent Controlling Authority was transferred to Civil Court of competent jurisdiction in view of S. 9 of the M. P. Act No. 7 of 1985. On 19-2-1985 the said application, which by fiction of law was treated as a plaint for ejectment in a Civil Court was received on 19-2-1985. On this date, the respondent-tenant was

absent. Hence, the Civil Judge Class-II, issued a summons to the respondent-tenant for appearance in the Court on 30-7-1985. On behalf of the tenant Shri Kamlakant Pandey, Advocate, appeared, who prayed for time for filing written statement on 1-7-9-1985, 29-10-1985, 3-12-1985, 23-2-1986 and 13-11-1985. On 6-3-1986 when the case was fixed for filing of the written statement, neither the tenant nor his counsel appeared, hence, the Court ordered to proceed ex parte against the tenant-defendant. On 15-4-1986 ex parte evidence was recorded and thereafter, after the payment of defect court fees, an ex parte judgment and decree was passed on 25-6-1986. The defendant-tenant neither applied for setting aside of the ex parte decree nor filed an appeal against the said ex parte decree. On 28-8-1986, the petitioner-landlord filed an application for execution before the executing Court for obtaining possession. A warrant of attachment of petitioners and for delivery of possession was issued on 2-9-1986. On 17-9-1986 the judgment-debtor the respondent No. 3 through his counsel appeared before the Executing Court and submitted the objections in respect of the executability of the decree, in as much as that as the court-fees was not paid on the plaint by the plaintiff-decree-holder after transfer of the application, nor the application was amended so as to put the proper valuation, cause of action and relief, the Civil Court could not have entertained the suit and the decree so passed on such a plaint is a nullity and cannot be executed. The Executing Court dismissed the objections vide order dated 16-10-1986 annexed as Annexure-C. Against this, a revision was preferred by the tenant. The revisional Court placing reliance on an unreported judgment of this court in Second Appeal No. 28/86 M/s Decom Marketing Ltd. vs. Kallubhai, decided on 1-8-1986, held that on the application received after the transfer from the Rent Controller, the requisite Court fees was not affixed, as such it could not have been treated as a plaint. Therefore, the decree so passed on such a plaint after payment of court-fees by the petitioner-landlord is a nullity and cannot be executed.

Shri G.M. Chaphekar, learned counsel for the petitioner contended that according to the language used in S. 9 of the M. P. Act No. 7 of 1985, such an application transferred from the Rent Controlling Authority to a Civil Court by deeming provisions shall be treated as plaint and as such an application could not have been dismissed for want of deficit court fees. Reliance was placed on a Division Bench decision of this Court in Pannalal Shrivastava and Ors. vs. Dinesh Chand and Ors. (1986 MPLJ 680). Learned counsel also alternatively contended that when the deficit court fees was paid, the plaint will be deemed as a valid plaint from the date of its institution. Reliance was placed on the section 4 of the Court Fees Act, 1970 and on the S. 149 of the CPC and on the decision of the Apex Court in Mannan Lal Vs. Chhotaka Bibi, (Dead) by Lrs. B. Sharda Shankar and Others, . Learned counsel further contended that the Executing Court was bound to execute the decree as it stands unless there is inherent lack of jurisdiction. Reliance was placed on the decision in Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, and a Full Bench report of this court in Moolchand and others vs. Mangilal (1965 MPLJ 89). Learned counsel also placed reliance on

S. 99 of the Code of Civil Procedure, wherein a decree cannot be reversed/modified for error or irregularity not affecting the merits or jurisdiction. Learned counsel also further contended that even if the decree was without jurisdiction, the tenant was bound to file an appeal before the appellate court to get it set aside or could have applied for setting aside the ex parte decree. This having not been done, the tenant was not entitled to raise such objections before the Executing Court, Therefore, the revisional court clearly exceeded its limit of authority in holding that the decree was without jurisdiction.

Shri S. R. Phadnis, learned counsel for the respondent-tenant contended that the Revisional Court relying upon an unreported judgment in the case of M/s. Decom Marketing Ltd. vs. Kallubhai (supra) rightly held that the decree was not executable as there was an inherent lack of jurisdiction. The revisional Court has rightly considered the objections contained in Annexure-B. The plaint so presented was not a valid plaint unless it is amended and proper cause of action is shown, proper valuation is made, relief is claimed for and the proper court fees is paid. Learned counsel further submitted that the cases in respect of the payment of deficit court fees are not applicable in the present case as no court fees was paid at all on the plaint after the transfer of the application from the Rent Controller to Civil Court. Therefore, the trial court was bound to reject the plaint under O.7, R. 11 of the Civil Procedure Code. Learned counsel also contended that this court shall not interfere in the supervisory jurisdiction under Article 227 of the Constitution of India even if the order of the revisional Court suffers from errors of fact and errors of law. Reliance was placed by the learned counsel on the decision of the Apex Court in Mohd. Yunus Vs. Mohd. Mustaqim and Others, .

After hearing the learned counsel we are of the opinion that this petition deserves to be allowed for the reasons given hereinafter:

After the amendment in S. 23-J of the Act by M. P. Act No. 7 of 1985 u/s 9 of the M. P. Act No. 7 of 1985, the application stood transferred to a Civil Court of competent jurisdiction. S. 9 reads as under:

S. 9: Transfer of pending application to Civil Court -- An application filed by the landlord, other than that defined in S. 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.

A bare reading of S. 9 makes clear that on transfer of the proceeding to Civil Court of competent jurisdiction the application is deemed to be a plaint and the proceedings in the Civil Court based on it is deemed to be 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. See the Division Bench case of this Court

in Pannalal Shrivastava and Ors. (supra). Therefore, after transfer, the suit could not have been dismissed for payment of deficit court fees on the plaint. Moreover, the trial court did not exercise the powers under O.7, R. 11 Civil Procedure Code, as the application as plaint was already admitted by the trial court after transfer. Court has also no power to reject the plaint on the ground of Court fees being insufficient, it is only when the court calls upon the plaintiff to make good the court fee, and the plaintiff makes a default in compliance which is not the case here. Moreover, this power could have been exercised at the initial stage and not at the end of the trial. Once the court has exercised the discretion in allowing to make up deficiency in court fees, the order relates back to the date of filing of plaint and it has the same force and effect as if such fee has been paid in the first instance in view of S. 149 of the Code of Civil Procedure. See also the case of the Apex Court in Mannalal vs. Mst. Chhotka Bibi (supra).

It is not in dispute that the transferee Court was not the court of competent jurisdiction. After the transfer of the application, which was treated as a plaint and because of the fiction, the plaint was registered as a suit under O.5, R.1 of the Civil Procedure Code, and thereafter summons was issued to the defendants to answer the claim on a date fixed by the Court i.e. 23-7-1985 but after the issuance of the summons, neither the defendant raised any objection about the defects in the plaint nor the defects as contemplated under O.7, R. 11 of the Civil Procedure Code. The defect because of non-payment of the court fees was not such so as to warrant the court to dismiss the plaint. Moreover, under O.7, R.11 CPC the Court in which the suit has been filed has no power to reject the plaint on deficit court fee unless an opportunity is afforded to plaintiff to make good of deficit court fees as required by the Court and if the plaintiff fails to supply the requisite court fee within time fixed by the Court, then only action could have been taken under O.7, R. 11 Civil Procedure Code. But in the present case the court required payment of deficit court fees, the plaintiff complied with the requirement. As such there was no error in the decree nor there was any inherent lack of jurisdiction in the Court. In any case when if the respondent was aggrieved of any error, he ought to have taken objection before the Court trying the suit and not before the Executing Court, where the suit was decreed. The respondent did not apply to set aside the ex parte decree nor filed any appeal. Against such judgment and decrees, which are without jurisdiction, an appeal lies which was not filed by the respondent-tenant on the other hand the respondent-tenant did not take any action and slept over his rights and remedies, hence, he has to blame for himself. This is trite law that a decree is to be executed as it stands and the executing Court cannot go behind the decree unless it is shown that the decree is a nullity or the Court which passed the decree was inherently lacking in its jurisdiction to pass such decree, which we do not find in the present case. The case of M/s Decom Marketing Ltd. (supra) is clearly distinguishable as in that case after transfer of the application, no notice or summons was served upon the tenant, hence, the learned single judge, after considering all the facts of the case and question of court fees held that the decree so passed was a

nullity.

Therefore, in the facts of the case, we are clearly of opinion that the Revisional Court on the objection of the respondent-tenant in execution proceedings by holding that that decree was a nullity, exceeded its authority, hence the order so passed deserves to be quashed.

In the result, the petition is allowed, the order Annexure-D of the Revisional Court is quashed. No order as to costs. The security amount, if any, shall on verification, be refunded to the petitioner.