

(1978) 08 MP CK 0030

In the Madhya Pradesh High Court

Case No : Miscellaneous II Appeal No. 43 of 1977

Radhey Shyam Narsinghdas Renwal

APPELLANT

Vs

Bajrangdas Prahladdas Patankar

RESPONDENT

Date of Decision : 08-08-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1), 6

Citation : (1979) MPLJ 606

Hon'ble Judges : J.P. Bajpai, J

Bench : Single Bench

Advocate : S.K. Dubey, for the Appellant; H.B. Mangal, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Bajpai, J.

This miscellaneous appeal is directed against the order made by the lower appellate Court rejecting the various objections raised by the appellant-judgment-debtor u/s 47 of the CPC to the execution of the decree for eviction already passed against him. The lower appellate Court however affirmed the order made by the executing Court with the modification that before causing the actual eviction of the appellant, the amount of compensation as required by section 6 of the M.P. Accommodation Control Act, 1955 (here-in-after referred to as the Act), be determined and tendered for payment to the judgment-debtor. However, since the appellant-judgment-debtor was not aggrieved by this part of the order of the lower appellate Court, the same does not form the subject-matter of this appeal. It has been separately challenged by the decree-holder in the connected Miscellaneous Appeal No. 41/1977 and will be dealt with and decided therein.

For the purposes of the present appeal a brief calendar of the relevant facts is as below. Undisputedly, the decree-holder-respondent-landlord obtained a consent decree for eviction of the judgment-debtor tenant on the basis of a compromise

arrived between the parties in a suit brought by the plaintiff-landlord claiming eviction, arrears of rent and mesne profits. The plaintiff claimed eviction on the ground of section 4 (1) (h) of the Act of 1955 which was in force on the date of the institution of the suit. The ground contemplated was of genuine need of the suit accommodation by the landlord for the non residential purposes. As per the terms of the compromise, the plaintiff-landlord was to get the possession of the suit-premises after a period of 11 years. It was also agreed that the defendant-tenant shall pay a sum of Rs. 75 P.M. as mesne profits for the use and occupation of the suit shop during the aforesaid period of 11 years and, in case of default made by him in the matter of payment of the amount of mesne profits as required by the terms of the decree, the plaintiff would become entitled to evict the defendant by executing the decree even before the expiry of the agreed term of 11 years. The decree was passed in the year 11 years has already expired. When the decree was put in execution before the expiry of the term of 11 years on the ground that the judgment-debtor had committed default in payment of the amount of mesne profits, the judgment-debtor raised various objections to the execution of the decree. One of the objection was that the judgment-debtor has not committed any default and has paid the amount of mesne profits and, as such, the decree could not be put into execution. However, this aspect being on a pure question of fact has already been dealt with by the Courts below and in the absence of any receipt or cogent piece of evidence showing payment of the amount of mesne profits, the plea of the judgment-debtor was found to be false and frivolous. The only evidence relied on by him in support of his contention was in the shape of self-serving entries made by him in his own account books. The same was disbelieved and it was held that the judgment-debtor did commit the default and that the decree-holder was entitled to put the decree into execution even before the, expiry of the term of 11 years. This finding is not open for interference at this stage before this Court, and the Courts below have rightly found that the plea of payment based only on the oral testimony and the self-serving entries made by the judgment-debtor in this account books was false.

The other objections which were mainly urged before this Court were on the following counts :--

(i) That the decree itself was invalid and unenforceable because there is nothing in the form and actual contents of the decree to indicate that the ground as contemplated by section 4 (h) of the Act was established. The argument was that since the provisions of the Act provided making of any decree except on any one of the grounds enumerated in section 4 of the Act the decree without disclosing the said fact was illegal and could not be enforced by putting the same into execution.

(ii) That the terms of the compromise itself created a fresh tenancy in favour of the defendant-judgment-debtor and, as such, the decree-holder could not evict him by putting the said decree into execution, and was required to bring a fresh suit for claiming eviction on establishing the requisite grounds as contemplated

by section 12(1) of the M.P. Accommodation Control Act, 1961.

(iii) That subsequent to the passing of the decree the plaintiff-landlord had obtained vacant possession of certain non-residential accommodation and, therefore, the ground of genuine bona fide need has disappeared and the decree cannot be executed.

(iv) That the claim of Rs. 75 P.M. towards the charges for use and occupation was hit by the provisions of section 6 of the M.P. Accommodation Control Act, 1961 in as much as any agreement creating a liability to pay rent in excess of the standard rent has been declared to be illegal by the said Act and, therefore, the claim at the rate of Rs. 75 was bad in law.

So far as the first objection is concerned, it would suffice to observe that mere omission in the decree to state that the ground u/s 4 (h) of the Act was established, will not make the decree invalid provided there is sufficient material on record to indicate that the ground in question was found to be proved and established before making the decree for eviction. Undisputedly, the decree is based on the compromise arrived in between the parties. The term No. 1 of the compromise itself is a complete answer to the objection raised by the judgment-debtor. According to the contents of the said term, the defendant tenant did specifically admit that the plaintiff-landlord needed the suit accommodation for his own business and that the said need was genuine and the claim for eviction based on the ground u/s 4(h) of the Act was admitted. On the face of this term it is not open to the judgment-debtor to contend that the decree ultimately passed on the basis of the compromise was invalid in any manner.

In the present case, there was a clear admission in the agreement of the compromise of the availability of the ground u/s 4 (h) of the Act. Under these circumstances, it would be presumed that the Court was satisfied about the existence of the statutory ground u/s 4 (h) of the Act and even if the said fact has not been mentioned in the actual decree, the decree would not become a nullity because such a satisfaction can be presumed and inferred from the material which may be either in the shape of evidence recorded or produced in the suit, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise itself. Once a true and clear admission about the availability of the ground u/s 4 (h) of the Act was made by the defendant-tenant, it was the best proof of the said fact and could rightly be made the foundation of the right of the plaintiff landlord to obtain a decree for eviction. This position is now well settled by the decision of the Supreme Court in Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, . The first objection is, therefore, rejected.

As regards the second objection, the term No. 8 of the compromise as reproduced below is relevant:--

That the status of the defendant-judgment-debtor herein-after will not be of a tenant or statutory tenant and neither of the parties will be entitled to raise the

plea that a new tenancy has been created.

The language of the aforesaid term is absolutely clear and specific. There is no vagueness and, therefore, it can be safely inferred that the parties while entering into the compromise did not intend to create a fresh lease despite the fact that the defendant was permitted to remain in occupation of the suit premises for a particular term on payment of certain amount towards mesne profits. Similarly, the language used in conditions Nos. 5 and 6 also makes it clear that the payment at the rate of Rs. 75 per month for the period during which the defendant was permitted to remain in occupation would be in the nature of mesne profits and not as rent. On the face of the aforesaid terms, there is no scope to apply the observation made by the learned single Judge of this Court in *Babulal Vs. Nathulal*, . What has been observed in the the said decision is that in order to ascertain whether a particular agreement created a fresh relationship of landlord and tenant, the intention of the parties is to be gathered after reading the contents of the agreement as a whole. It has been specifically stated that where the language of the agreement is free from any ambiguity, the document has to be construed according to the strict and plain language used therein. In the present case, on the face of the terms referred above, there is no scope to contend that the agreement amounted to a fresh lease.

It is true that the decree for eviction of the tenant-defendant was passed on the basis of consent. The judgment-debtor though liable to immediate eviction was allowed to continue in possession of the suit premises for the fixed period on the condition that he would pay mesne profits at a higher rate. It was specifically stated that either on the expiry of the term agreed, or, in case of default in payment of mesne profits, the decree-holder would become immediately entitled to delivery of possession by putting the decree into execution. Under these circumstances, it cannot be held that it was a case of fresh lease or licence. The observation made by their Lordships of the Supreme Court in *Bai Chanchal and Others Vs. Syed Jalaluddin and Others*, are relevant. The concession given to the judgment-debtor to remain in occupation of the suit premises for a particular term on payment of mesne profits was nothing but a mere concession for entering into the compromise. This term, therefore, in no way could be interpreted as creating a new tenancy. Consequently, this objection too has no force and is rejected.

As regards the third objection, it would suffice to observe that in the present case the subsequent circumstance of obtaining vacant possession of certain non-residential premises by the decree-holder cannot be taken into account for the reason that the decree for eviction on the ground of genuine need has already become final. It is true that subsequent events can be considered at the stage of appeal or revision even after the passing of the decree by the trial Court, as observed by their Lordships in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, In the present case, the decree has already become final in the absence of any appeal or revision having been preferred against the same. A

decree which has become final remains binding on the parties and the executing Court cannot go behind the same. This objection too is, therefore, rejected.

So far as the fourth objection is concerned, it needs mention for simply being rejected. The provisions of section 6 of the M.P. Accommodation Control Act relate to agreements regarding payment of rent and not to the quantum of mesne profits or damages either determined by the Court or fixed by the parties in terms of compromise. As already held earlier while dealing with second objection regarding the effect of the terms of the compromise, the agreement did not amount to creating a fresh lease in favour of the defendant. So no question of the applicability of section 6 arises. Even otherwise, generally, till the standard rent is fixed a tenant is bound to pay the agreed rent.

No other point was pressed.

This miscellaneous second appeal, therefore, fails and is dismissed with costs. Counsel's fee according to the schedule, if certified.